

**CITY OF EUREKA
CITY COUNCIL/
REDEVELOPMENT AGENCY
AGENDA**

Marian Brady 1st Ward
Linda Atkins 2nd Ward
Mike Newman 3rd Ward
Melinda Ciarabellini 4th Ward
Lance Madsen 5th Ward



Frank J. Jäger, Mayor

**REGULAR MEETING
TUESDAY, APRIL 19, 2011
CLOSED SESSION 5:00 P.M.
REGULAR SESSION 6:00 P.M.
COUNCIL CHAMBER
531 K STREET
EUREKA, CA 95501**

David Tyson, City Manager
Pam Powell, City Clerk
William Bragg, Interim City Attorney

CLOSED SESSION

If closed session items cannot be completed by 5:55 P.M., they will be continued at the conclusion of the regular agenda, provided there is time. If time does not allow then those closed session items will be continued to the next regular meeting.

A. PUBLIC COMMENT PERIOD

(Limited to 3 minutes each speaker on closed session agenda items only)

B. Conference with labor negotiators

Agency designated representatives: Gary M. Bird for City of Eureka
Employee organization: Eureka Firefighters' Local #652 (EFL) and Eureka Fire Officers Local (EFOL).
Pursuant to California Government Code Section 54957.6

C. Conference with real property negotiators - Property: City-owned property located at

2186 Tydd Street, APN's: 002-191-0202 and 002-191-013
Agency negotiator: David W. Tyson for the City of Eureka
Negotiating parties: Humboldt Open Door Clinic
Under negotiation: Price, terms and conditions.
Pursuant to California Government Code Section 54956.8

D. Conference with real property negotiators - Property: APN 001-054-45 and 001-054-13

Agency negotiator: David W. Tyson for the City of Eureka
Negotiating Parties: Eureka Waterfront Partners
Under negotiation: price, terms, and conditions
Pursuant to California Government Code Section 54956.8

REGULAR SESSION – 6:00 P.M.

ROLL CALL

INVOCATION

PLEDGE OF ALLEGIANCE

REPORT OUT OF CLOSED SESSION

MAYOR'S ANNOUNCEMENTS

Cal Trans/Eureka Paving Project

Presentation of Proclamations: Peace Officers' Memorial Day-May 2, 2011
Lemonade Day-June 4, 2011

COUNCIL REPORTS / CITY-RELATED TRAVEL REPORTS

BOARD/COMMISSION REPORTS

Keep Eureka Beautiful

PUBLIC HEARINGS

Public Hearings are scheduled for a time certain of 6:00 P.M. unless noticed otherwise, or as soon thereafter as possible.

1. Public Hearing – Schneider Cargo Storage Area Coastal Development Permit
Recommendation:
 1. Hold a public hearing.
 2. Adopt the Findings of Fact as described in Exhibit ‘A’; and
 3. Approve the Coastal Development Permit subject to the Conditions of Approval listed in Exhibit ‘B’.

(Community Development)
2. Public Hearing – Unmet Transit Needs
Recommendation:
 1. Hold a public hearing regarding unmet transit needs within Eureka City limits; and
 2. Direct staff to forward a transcript of comments to the Humboldt County Association of Governments (HCAOG) for inclusion in the 2010-11 Unmet Needs Report of Findings.

(Finance Director)
3. Amendments to the Medical Cannabis Ordinance
Recommendation:
 1. Hold a public hearing; and
 2. Waive reading, read by Title only, and introduce Bill No. 835-C.S., an Ordinance of the City of Eureka Amending Title 15, Chapter 158 Medical Cannabis; Cultivation, Processing and Distribution.

(Community Development)

PUBLIC COMMENT PERIOD

This is the time for members of the public who wish to be heard on matters that do not appear on the Agenda. Pursuant to City Council Resolution No. 2011-22, City Council policy is to limit each speaker to three (3) minutes. Such time allotment or portion thereof shall not be transferred to other speakers. The public will be allowed to speak concurrently with the calling of an agenda item following the staff presentation of that item.

Pursuant to the Brown Act, the City Council may not take action on an item that does not appear on the Agenda.

4. Is there any person in the audience who wishes to address the Council at this time?

CONSENT CALENDAR

Notice to the Public: *All matters listed under this category are considered to be routine by the City Council and will be enacted by one motion. Pursuant to City Council Resolution 2011-22, If a member of the public would like an item on the Consent Calendar pulled and discussed separately, that request shall be made to a Councilmember prior to the meeting. Unless a specific request is made by a Councilmember, the Consent Calendar will not be read and there will be no separate discussion of these items.*

5. Council meeting minutes.

Recommendation: Approve the regular Council/Redevelopment Agency Board meeting minutes of March 1, 2011 and March 15, 2011 and the special Council/Redevelopment Agency Board meeting minutes of March 9, 2011 as submitted.
(City Clerk)

6. Squires, Floyd

Recommendation: Reject the claim for damages.
(City Attorney)

7. Wolf, Sydel

Recommendation: Reject the claim for damages.
(City Attorney)

8. Authorization to Prepare and Submit Claims for Transit Funding

Recommendation: Authorize staff to prepare and submit a Transportation Development Act (TDA) claim in the amount of \$810,819.
(Finance Director)

9. Transportation Development Act (TDA) Fiscal and Compliance Audit and Management Letter, Fiscal year 2009-10
Recommendation: Receive and file the Humboldt County Association of Governments (HCAOG) Transportation Development Act (TDA) fiscal and compliance audit and the Humboldt County Association of Governments (HCAOG) Management Letter for the 2009-10 fiscal year.
(Finance Director)
10. Request for Exception to the Hiring Freeze
Recommendation: Approve an exception to the hiring freeze for a Senior Personnel Analyst position.
(Personnel Director)
11. Request for Exception to the Hiring Freeze.
Recommendation: Approve an exception to the hiring freeze for a Maintenance Worker I/II position.
(Personnel Director)
12. Implement Service Alternative Approved in 2010/11 Budget
Recommendation: 1. Reclassify the currently allocated Information Services Analyst II position to Senior Information Services Analyst, adopt the job specification for Senior Information Services Analyst per the 2006 Koff Class/Compensation Study and establish an M24 salary grade for the position consistent with the position's essential job functions; and
2 Adopt updated Koff Study job specification for Information Services Manager and establish an M27 salary grade for the position consistent with the position's essential job functions.
(Personnel Director)
13. Centerline Striping 2011 Bid No. 2011-16
Recommendation: Appropriate \$15,000 from Gas Tax Funds for the Centerline Striping 2011 Project.
(Engineering)
14. City Engineer Employment Contract
Recommendation: Authorize the City Manager to execute a City Engineering At-Will Employment Agreement with Kurt Gierlich including corresponding salary adjustment.
(City Manager)

15. City Attorney Recruitment

Recommendation: Authorize the City Manager to execute an Executive Search Services Agreement between the City of Eureka and Peckham and McKinney to provide Executive Search Services for the position of City Attorney.
(City Manager)

16. Agreement Amendment between the City of Eureka and Humboldt Community Services District for Regional Wastewater Treatment

Recommendation: Authorize the City Manager to execute an updated Agreement between the City of Eureka and Humboldt Community Services District for Regional Wastewater Treatment.
(Assistant City Manager)

17. Martin Slough Interceptor PH-1 Final Easement Acquisitions

Recommendation: 1. Authorized staff to complete negotiations and execute agreements with the last two landowners (Barnum & Lundblade) of the remaining four properties for Phase 1 of the Martin Slough Interceptor project for the purchase of permanent and temporary construction easements; and
2. Approve an expenditure of up to \$150,000 in Wastewater Funds for the acquisition of four permanent easements and four temporary construction easements (eight total) for the Martin Slough Interceptor Project Phase 1; and
3. Authorize the City Manager to execute the acquisition documents for the eight remaining easements for the Martin Slough Interceptor Project Phase 1.
(Engineering)

18. Martin Slough Interceptor Phase 1 Award of Construction, Bid No. 2011-01

Recommendation: 1. Declare Mercer-Fraser Company, the low bidder on Martin Slough Interceptor Phase 1 project; and
2. Award Bid No. 2011-01 to Mercer-Fraser for the amount of \$4,359,065, and approve \$4,800,000 for construction, which includes a contingency of approximately 10%.
(Engineering)

19. Eureka Redevelopment Agency – Series B Lease Revenue Bonds

Recommendation: Transfer remaining balance of Series B Lease Revenue Bonds from Project 381: C Street Market Square & Parking Lot Utilities to Project 438: Fishermen's Terminal Building.
(Engineering)

ORDINANCES/RESOLUTIONS

20. Flood Plain Ordinance

Recommendation: Waive reading, read by Title only and Adopt Bill No. 825-C.S., an Ordinance of the City of Eureka Amending Title 15 Pertaining to Flood Hazard Area Regulations.
(Community Development)

REPORTS/ACTION ITEMS

CITY MANAGER/EXECUTIVE DIRECTOR'S REPORTS

Eureka Police Department Report

ADJOURNMENT

If open session items cannot be completed by 9:30 P.M., the meeting may be adjourned to the next regular meeting or Council may vote to extend the meeting.

NOTICES

- The City Council agenda and supporting documents are available for public review on the Friday afternoon prior to the Tuesday meeting at the City Clerk's Office, the Eureka Humboldt County Library and on-line at www.ci.eureka.ca.gov.
- The numerical order of items on this agenda is for convenience of reference. Items may be taken out of order upon the request and consensus of the Mayor and Council.
- Any writing that is a public record not exempt from public disclosure and relating to an agenda item for open session of the City Council is available for public inspection at the Office of the City Clerk, 531 K Street, Room 207, Eureka, CA 95501.
- The meeting rooms are ADA accessible. Accommodations and access to City meetings for people with special needs must be requested of the City Clerk at 441-4175 72 hours in advance of the meeting. This agenda and other materials are available in alternate formats upon request.
- All persons in attendance at public meetings are requested to observe the following rules of civil debate:
 1. We may disagree, but we will be respectful of one another.
 2. All comments will be directed to the issue at hand.
 3. Personal attacks are unacceptable.

Applauding or other displays of approval/disapproval are discouraged.

- Regular City Council/Redevelopment Agency meetings are broadcast live by Humboldt Access on Cable Channel 10. Council meetings can also be viewed on line at www.accesshumboldt.net – Search archives “Eureka City Council Meetings”.
- To minimize distractions, please be sure all personal communication devices are turned off or on silent mode.

Questions? Please e-mail ppowell@ci.eureka.ca.gov or contact the City Clerk's office at (707) 441-4175.

AGENDA SUMMARY**RE: SCHNEIDER CARGO STORAGE AREA
COASTAL DEVELOPMENT PERMIT****FOR AGENDA DATE: APRIL 19, 2011
AGENDA ITEM NO.:**

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RECOMMENDATION:

1. Hold a Public Hearing;
2. Adopt the Findings of Fact as described in Exhibit 'A'; and approve the Coastal Development Permit subject to the Conditions of Approval listed in Exhibit 'B'.

SUMMARY: The applicant is proposing a cargo storage facility be located on the Redevelopment-owned property at the northwest corner of West Waterfront Drive and the intersection of the west end of Marina Way, just north of the Schneider property on West Waterfront Drive. The storage facility will utilize the entire property.

The subject property is an approximate 5.27 acre parcel located within the Coastal Zone. The General Plan designation is Coastal Dependent Industrial (CDI), and the Zoning designation is Coastal Industrial (MC). Both the Zoning and General Plan designations support and promote coastal-dependent, and

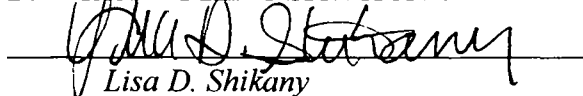
ATTACHMENTS:

Exhibit A Findings of Fact.....page 9
 Exhibit B Conditions of Approval.....pages 10-12
 Attachment A Vicinity Maps.....pages 13-14
 Attachment B Applicant submitted site map.....page 15

prepared by: Kristen M. Goetz

Continued page 2

FISCAL IMPACT: None with this action.

DEPARTMENT HEAD SIGNATURE:


Lisa D. Shikany

Interim Director of Community Development

CITY MANAGER SIGNATURE:


David W. Tyson

City Manager

REVIEWED BY:

Assistant City Manager
 Engineering
 Fire
 Public Works
 Redevelopment

DATE:

1-11-11
1-10-11
1-13-11
1-12-11
1-12-11

INITIALS:

ML
KG
PG
BAY
CTT

Council Action:

Ordinance No. _____

Resolution No. _____

SUMMARY (continued):

coastal related uses. The proposed storage facility is in an area which is potentially subject to the public trust, but which is filled, developed, and committed to urban uses. The Coastal Commission has delegated original permit jurisdiction to the City of Eureka while reserving appellate jurisdiction. A permit approved by the City may therefore be appealed to the State Coastal Commission.

According to the applicant, cargo may consist of up to 300 forty foot containers, or 5 million board feet of logs, or 8 million board feet of lumber, or assorted equipment such as the type that can be transported on a 600 foot cargo ship, or some combination of any of these items.

Cargo will be stored throughout the property, and individual cargo shipments are estimated to be stored at the subject site for 2 months to 2 years.

Site preparation will include minor grading of the site (less than 40 cubic yards), and drainage control. The site is basically level, graveled, and has direct access to the Schneider Dock. Maintenance clean-up of the existing logging debris would include cleaning up woody debris (bark, etc.) and taking the debris to the power plant or an approved off-site disposal site. Future improvements may include paving of the entire site and overhead lighting but these projects are not included in this permit. However, gravel or paving of fire lanes/access roads may be required in order to support the weight of fire apparatus, and /gravel paving of the fire lanes/access roads, if required, is included in this permit.

No hazardous materials will be stored on the site and hazardous material storage is not included in this permit. As proposed, all cargo will be stored in shipping containers, except for equipment, lumber, logs, or wood chips.

The applicant proposes to install a gate at the intersection of West Waterfront Drive and the southerly access road to Marina Way. The project also includes vacation of Marina Way between West Waterfront Drive and the westerly boundary of the subject parcel, and a street vacation is being processed under a separate permit (SV-10-0002). This will allow easy access between the existing Schneider property, and the proposed storage facility. However, installation of the proposed gate is not allowed under this permit, but will be included in the Street Vacation. Additionally, a condition of approval for the street vacation will be installation by the applicant of a Fire Department turnaround at the southwesterly end of the parking lot on Marina Way (APN 003-062-026).

The majority of the cargo will come by sea and leave by land, or arrive by land and leave by sea. However, a small portion of the cargo may arrive by land and leave by land. The estimated number of truck trips to transport cargo will be 20 peak trips per day and an average of less than 10 truck trips per day.

Previous uses of the subject parcel appear to have been for storage. A Coastal Development Permit was issued in 1998 to allow the removal of two pole barns from the property, and then in 2005, a Coastal Development Permit was approved to allow log storage on the property.

Analysis: The Local Coastal Program is the foundational policy document for areas of the City located in the coastal zone. It establishes farsighted policy that forms the basis for and defines the framework by which the City's physical and economic resources in the coastal zone are to be developed, managed and utilized. The Local Coastal Program is divided into two components: the first component is the *Land Use Plan*, which is the General Plan specific to land in the coastal zone. It outlines the existing conditions, permitted uses, and policies needed to achieve the goals of the Coastal Act and includes the general plan map. The second component of the Local Coastal Program is the *Implementation Plan*, which includes zoning regulations and the zoning map for land in the coastal zone, as well as specific coastal zone ordinances necessary to implement the policies of the Land Use Plan. A discussion of how the project complies with these two components follows:

Land Use Plan

According to *The General Plan Guidelines* published by the State Office of Planning and Research (OPR) a general rule for general plan consistency determinations can be stated as follows:

"An action, program, or project is consistent with the general plan if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment."

The Eureka General Plan Policy Document states:

"In interpreting and thoroughly understanding the City's overall land use and development philosophy, users of this Policy Document should understand that the goals, policies, and programs contained in Part II are as important, if not more so, than the Land Use Diagram itself. Accordingly, any review of individual development proposals must consider this Policy Document as a whole, rather than focusing solely on the Land Use Diagram or on particular policies and programs."

Policies and goals of the adopted LCP that support the project include the following:

Policy 1.A.1 The City shall encourage infilling of vacant urban land and reuse of underutilized urban land within the Planning Area as its first priority of accommodating demand for growth.

Policy 1.A.4 To promote the public safety, health, and welfare, and to protect private and public property, to assure the long-term productivity and economic vitality of coastal resources, and to conserve and restore the natural environment, the City shall protect the ecological balance of the coastal zone and prevent its deterioration and destruction.

Policy 1.A.5 Within the coastal zone, the City shall ensure that coastal-dependent developments have priority over other developments on or near the shoreline. Except as provided elsewhere in this General Plan, coastal-dependent development shall not be sited in a wetland. Coastal-related developments shall generally be accommodated proximate to the coastal-dependent uses they support.

Goal 1.L To ensure an adequate supply of commercial land for and promote the development of commercial uses to meet the present and future needs of Eureka residents and visitors and to maintain economic vitality.

Policy 1.L.1 The City shall discourage new commercial development within the city that will adversely affect the economic vitality of the Core Area. This City shall also encourage Humboldt County to discourage such development in adjacent unincorporated areas.

Goal 1.M To ensure an adequate supply of industrial land for and promote the development of industrial uses to meet the present and future needs of Eureka and to maintain economic vitality.

Policy 1.M.2 The City shall promote development and upgrading of the Westside Industrial Area to accommodate industrial growth and the relocation of industry from unsuitable sites and areas.

Policy 1.M.3 The City shall support the retention of existing and establishment of new fishing facilities related uses in the area north of the railroad tracks between Commercial Street and C Street in the Core Area. The City shall encourage new development in the area that reinforces the essentially industrial character of the area and reduces potential land use conflicts and speculative inflation of land values.

Policy 1.M.7 The City shall encourage coastal-dependent industrial facilities to locate or expand within existing sites. Non-coastal-dependent uses located along the waterfront shall, if feasible, be relocated to other more appropriate areas within the city.

Under the adopted Land Use Plan, the General Plan portion of the Local Coastal Program, the project site has a General Plan Land Use designation of Coastal-Dependent Industrial (CDI). The purpose of the CDI Land Use Designation is to promote development of coastal-dependent industrial uses along the City's waterfront and reuse vacant land in the Westside Industrial area.

The proposed storage facility is coastal-dependent in that a portion of the cargo that will be stored at the facility will arrive and depart by sea at the Schneider Dock.

Therefore, based on the discussion above, the Schneider Cargo Storage Facility is consistent with

the Land Use Designations applicable to the project site, and the Policy Document of the Land Use Plan.

Implementation Plan

The Implementation Plan includes the Coastal Zoning Regulations, the Zoning Map and specific Coastal Zone Ordinances that implement the policies of the LUP. In addition to specifying the regulations pertaining to specific zoning districts, the Coastal Zoning Regulations, Section 10-5.2940 et. seq. (section 156.050 et. seq.), specify Coastal Zone Development Standards that apply to all development in the Coastal Zone. The standards include those for public access, environmental resources, natural hazards, visual resources, public works, and development.

The property has a Zoning designation of Coastal Dependent Industrial (MC). The MC Coastal Dependent Industrial District is included in the zoning regulations to achieve the following purposes:

- (1) To reserve and protect parcels adjacent to the sea for coastal-dependent and coastal-related uses;
- (2) To provide for coastal-dependent energy and industrial uses;
- (3) To provide development standards which will ensure that potential environmental damage will be avoided, minimized, or mitigated;
- (4) To protect areas appropriate for industrial uses from intrusion by dwellings and other inharmonious uses;
- (5) To protect residential and commercial properties and to protect nuisance-free, nonhazardous industrial uses from noise, odor, insect nuisance, dust, dirt, smoke, vibration, heat and cold, glare, truck and rail traffic, and other objectionable influences, and from fire, explosion, noxious fumes, radiation, and other hazards incidental to certain industrial uses;
- (6) To provide opportunities for certain types of industrial plants to concentrate in mutually beneficial relationships to each other;
- (7) To provide adequate space to meet the needs of modern industrial developments, including off-street parking and truck loading areas and landscaping;
- (8) To provide sufficient open space around industrial structures to protect them from the hazard of fire and to minimize the impact of industrial plants on nearby residential and agricultural districts; and,
- (9) To minimize traffic congestion and to avoid the overloading of utilities by preventing the construction of buildings of excessive size in relation to the amount of land around them.

The Coastal Zoning District regulations control, among other things, the uses allowed within each zoning district. The MC zone district specifically permits "Water borne carrier import and export facilities" as a principally permitted use. Therefore, as discussed, the Schneider Cargo Storage Facility is consistent with the MC Zoning Designation, and the Coastal Zone Development Standards of the Implementation Plan.

Referral Comments: The project was referred to departments and agencies with jurisdiction over the project in March, 2010, and the project description was revised and re-circulated for comment in October, 2010. The original project description indicated there would be 200 truck trips per day; this was changed to 20 truck trips per day with the revision.

The North Coast Unified Air Quality Management District (NCUAQMD) originally responded indicating that a CEQA study would be required based on the nature and design of the equipment proposed and the level of activity identified. However, following the reduction in the number of truck trips from 200 to 20 per day, NCUAQMD determined that the study was not necessary and they had no further comment.

The Blue Lake Rancheria indicated that no known Wiyot cultural resources or the potential for impacts to significant buried resources were expected since the area is filled/reclaimed wetlands. However, the Wiyot Tribe indicated that the project is a culturally sensitive area, the Baylands contain many village sites and items of high cultural relevance, and there is a known village site within the project area. They asked to be notified if any cultural resources are discovered. The project proposes minor grading of the site to prepare areas for storage and for drainage. The City Engineering Department has indicated that the fill is approximately 10 feet in depth. At this time, no disturbance of native soils is proposed; however, a condition of approval has been added that the applicant shall notify appropriate agencies should a cultural discovery be made.

Pacific Gas and Electric requires that no cargo be stored within 6 vertical and horizontal feet of any overhead utility line, and a 10 foot wide vehicular access easement area along the northeasterly property line from the northerly Fire access gates must be maintained to allow access to the utility poles and overhead lines. No cargo or future structures may be located within this easement area. Additionally, PG&E requires a PG&E lock be placed on all gates to the property in case they need access to the poles or lines for maintenance or repairs.

The City of Eureka Engineering Department noted that public utilities have been placed within the southeasterly portion of the property along West Waterfront Drive. Therefore, a 10 foot wide Public Utility Easement (PUE) will be required along the southeasterly property line parallel with West Waterfront Drive. A City water line exists along the southwesterly property line between Marina Way and West Waterfront Drive, and a 20 foot wide PUE is required along the southwesterly property line.

A street and utility easement already exists over Marina Way from W. Waterfront Drive to the

southwest corner of Marina Way; therefore, the 20 foot easement originally requested in the Engineering referral comments along the southwesterly property line is not required. No structures can be erected over or within the easement area. Additionally, no gates or other obstructions can be placed on the public street (Marina Way); however, gates may be allowed if Marina Way is vacated in the future.

The Fire Department has indicated that access for fire-fighting operations must be provided, that road surfaces be constructed to support an imposed load of fire apparatus weighing at least 75,000 pounds, and that fence gates be provided in at least four places to access fire lanes. Fire also stated that the height of stored materials is a concern and northwest access to the existing facilities from the south end of Marina Way must be maintained. A new fire hydrant will be required on West Waterfront Drive at the east corner of the property and additional development on the subject property or neighboring property may require extension of the south end of the water line back to West Waterfront Drive, and the installation of additional fire hydrants. If these future installations are necessary, they would be within the 20 foot PUE along the southwesterly property line.

Public Works indicated that in the past, sediment being tracked from the site by vehicles and equipment has been an issue. However, in consultation with Public Works, they indicate that whatever materials are used to provide the required Fire access lanes (e.g. paving, gravel) should alleviate the sediment tracking issue.

Lastly, on the existing Schneider parcel (APN 003-062-028) located southwest of the subject parcel, as well as on the subject parcel, there are required off-street parking spaces located on the northeast side of several of the northerly buildings, and the spaces are accessed from Marina Way. Access to those parking spaces must be available to both employees and the public any time the buildings they serve are occupied, or the parking spaces need to be relocated, following Design Review approval, so that the spaces are located on and accessed from the Schneider property (APN 003-062-028).

The above comments have been included as Conditions of Approval.

Additional comments were received during the referral process that pertain to the proposed vacation of Marina Way. Those comments will be incorporated as comments and/or conditions of approval in the Street Vacation (SV-10-0002).

No other issues were identified that would indicate that the project as conditioned would not be consistent with the Local Coastal Plan and Zoning regulations.

California Environmental Quality Act: A Coastal Development Permit is a discretionary action subject to environmental review in accordance with the California Environmental Quality Act

**RE: SCHNEIDER CARGO STORAGE AREA COASTAL
DEVELOPMENT PERMIT**

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(CEQA); however, this project qualifies for a Class 1 exemption (Section 15301) from CEQA which exempts the minor alteration of existing facilities.

Summary and Conclusion: In order to approve the Coastal Development Permit, the City Council must find that the project is in conformance with the adopted and certified Local Coastal Program. Based on the discussion above Staff believes that such a finding can be made. Therefore, Staff recommends that the City Council adopt the Findings of Fact listed in Exhibit 'A,' and approve the Coastal Development Permit subject to the conditions of approval listed in Exhibit "B". The City's final action on the Coastal Development Permit is appealable to the State Coastal Commission.

Recommended Motion:

"I move that the City Council adopt the Findings of Fact in Exhibit 'A' and approve the Coastal Development Permit subject to the Conditions of Approval listed in Exhibit 'B'"

Exhibit "A"

FINDINGS OF FACT

The decision of the City Council to approve with conditions the subject application was made after careful, reasoned and equitable consideration of the evidence in the record, including, but not be limited to: written and oral testimony submitted at the public hearing; the staff report; site investigation(s); agency comments; project file; and, the evidence submitted with the permit application. The findings of fact listed below "bridge the analytical gap" between the raw evidence in the record and the Council's decision.

1. The project site is located in the California Coastal Zone and a Coastal Development Permit is required. The City of Eureka has permit jurisdiction for issuing the Coastal Development Permit, and the City's final action on the Coastal Development Permit is appealable to the State Coastal Commission.
2. A Coastal Development Permit is a discretionary action subject to environmental review in accordance with the California Environmental Quality Act (CEQA); however, this project qualifies for a Class 1 exemption (Section 15301) from CEQA which exempts the minor alteration of existing facilities.
3. Under the adopted Land Use Plan, the General Plan portion of the Local Coastal Program, the project site has a General Plan Land Use designation of Coastal-Dependent Industrial (CDI).
4. The purpose of the CDI Land Use Designation is to promote development of coastal-dependent industrial uses along the City's waterfront and reuse vacant land in the Westside Industrial area.
5. The proposed project is supported by several goals and policies of the City of Eureka General Plan, including those relating to Land Use and Development, Commercial Development and Industrial Development.
6. The property has a Zoning designation of Coastal Dependent Industrial (MC). The MC zone district specifically permits "Water borne carrier import and export" as a principally permitted use. Therefore, the proposed cargo storage facility is consistent with the MC Zoning Designation and the Coastal Zone Development Standards of the Implementation Plan.
7. No issues were identified by referral departments or agencies that would indicate that the project as conditioned would not be consistent with the Local Coastal Plan and Zoning regulations.

End Exhibit A

Exhibit "B"

Conditions of Approval

Approval of the Coastal Development Permit is conditioned on the following terms and requirements. The violation of any term or requirement of this conditional approval may result in the revocation of the permit.

1. During any necessary grading, or installation of fire access lanes, should buried archeological or historical resources be encountered all work will temporarily stop in the immediate area, and a qualified archeologist, and the Wiyot Tribe, will be contacted to evaluate the materials. Prehistoric materials may include chert flakes, tools, locally-darkened midden soils, ground stone artifacts, dietary bone, and human burials. If human burial is discovered during construction operations, State law requires that the County Coroner be contacted immediately. If such remains are found to be those of a Native American, the California Native American Heritage Commission will then be contacted by the Coroner to determine appropriate treatment of the remains.

2. No cargo shall be stored at any time within 6 vertical and horizontal feet of any overhead utility line to the satisfaction of Pacific Gas and Electric.

3. Prior to Building Permit issuance, if required, or Design Review, whichever is later, a 10 foot wide vehicular access easement along the northeasterly property line from the northerly Fire access gates shall be recorded to allow access to the utility poles and overhead lines. No cargo or future structures shall be located within this easement area. This condition shall be completed to the satisfaction of Pacific Gas and Electric, the City Engineering Department, and Community Development.

4. At the time of installation of any gates on the property, Pacific Gas and Electric shall be allowed to place their lock on all gates to allow access to the utility poles or overhead lines for maintenance or repairs. This condition shall be completed to the satisfaction of Pacific Gas and Electric.

5. Prior to Building Permit issuance, if required, or Design Review, whichever is later, a 10 foot wide Public Utility Easement (PUE) shall be recorded along the southeasterly property line parallel with West Waterfront Drive. No ~~cargo or~~ future structures shall be located within this easement area. This condition shall be completed to the satisfaction of the City Engineering Department and Community Development.

6. No gates or other obstructions shall be placed on the public street (Marina Way) unless or until Marina Way is vacated, and shall then be placed only as subject to any conditions of approval required by the Street Vacation.

7. Access for fire-fighting operations shall be provided by means of fire lanes and/or access roads spaced at intervals so that no portion of any storage or parking area is over 50 feet from a fire lane. Specifications and locations of fire lanes and access roads shall be determined by the Fire Department.

8. Prior to use of the property for storage, fire lanes and/or access roads shall be constructed of gravel, asphalt, concrete, or other approved surface to support an imposed load of a fire apparatus weighing at least 75,000 pounds. This condition shall be completed to the satisfaction of the Fire Department, Public Works, Engineering, and Building Departments.

9. Prior to use of the property for storage, fence gates shall be provided at locations prescribed by the Fire Department to access fire lanes/access roads. Gates shall comply with EMC section 92.02 D103.5.

10. Storage in excess of five containers height shall be permitted only with the prior authorization of the Fire Department. Improved access may be required, including but not limited to, wider access roadways through the facility to allow aerial support.

11. Northwest access to the existing facilities from the south end of Marina Way shall be maintained at all times to the satisfaction of the Fire Department.

12. Prior to utilizing the property for storage, a new fire hydrant shall be installed on West Waterfront Drive at the northeast corner of the property at a location chosen by the Fire Department.

13. Prior to installation of any fire hydrants on either private or public property, all permits, including Building Permits and Encroachment Permits, required fees, and approval for the proposed location of each hydrant shall be obtained. This condition shall be completed to the satisfaction of the Engineering, Fire, Public Works, and Building Departments.

14. Installation of any fire hydrant shall be performed by a professional approved by the Engineering Department prior to the installation of the hydrant.

15. Access to the required off-street parking spaces which are located on the subject property and on the existing Schneider parcel (APN 003-062-028) on the northeast side of several of the northerly buildings shall be available to both employees and the public any time the buildings they serve are occupied, or the parking spaces shall be relocated, following Design Review approval, so that the spaces are located on and accessed from the Schneider property (APN 003-062-028).

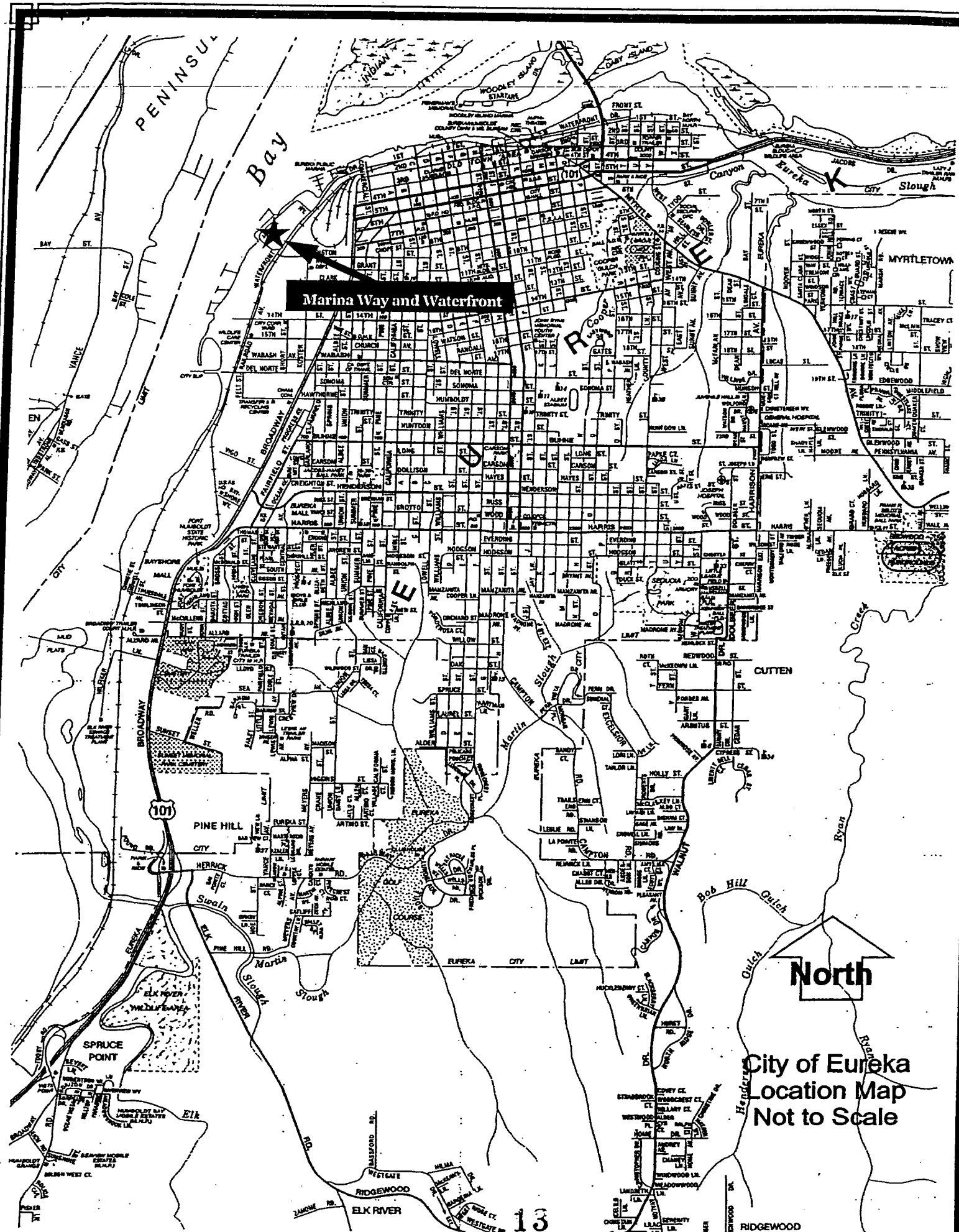
16. Building permits shall be obtained prior to commencement of any work that requires a Building Permit. This condition shall be completed to the satisfaction of the Building,

RE: SCHNEIDER CARGO STORAGE AREA COASTAL DEVELOPMENT PERMIT	FOR AGENDA DATE: APRIL 19, 2011 AGENDA ITEM No.: <i>Page 12</i>
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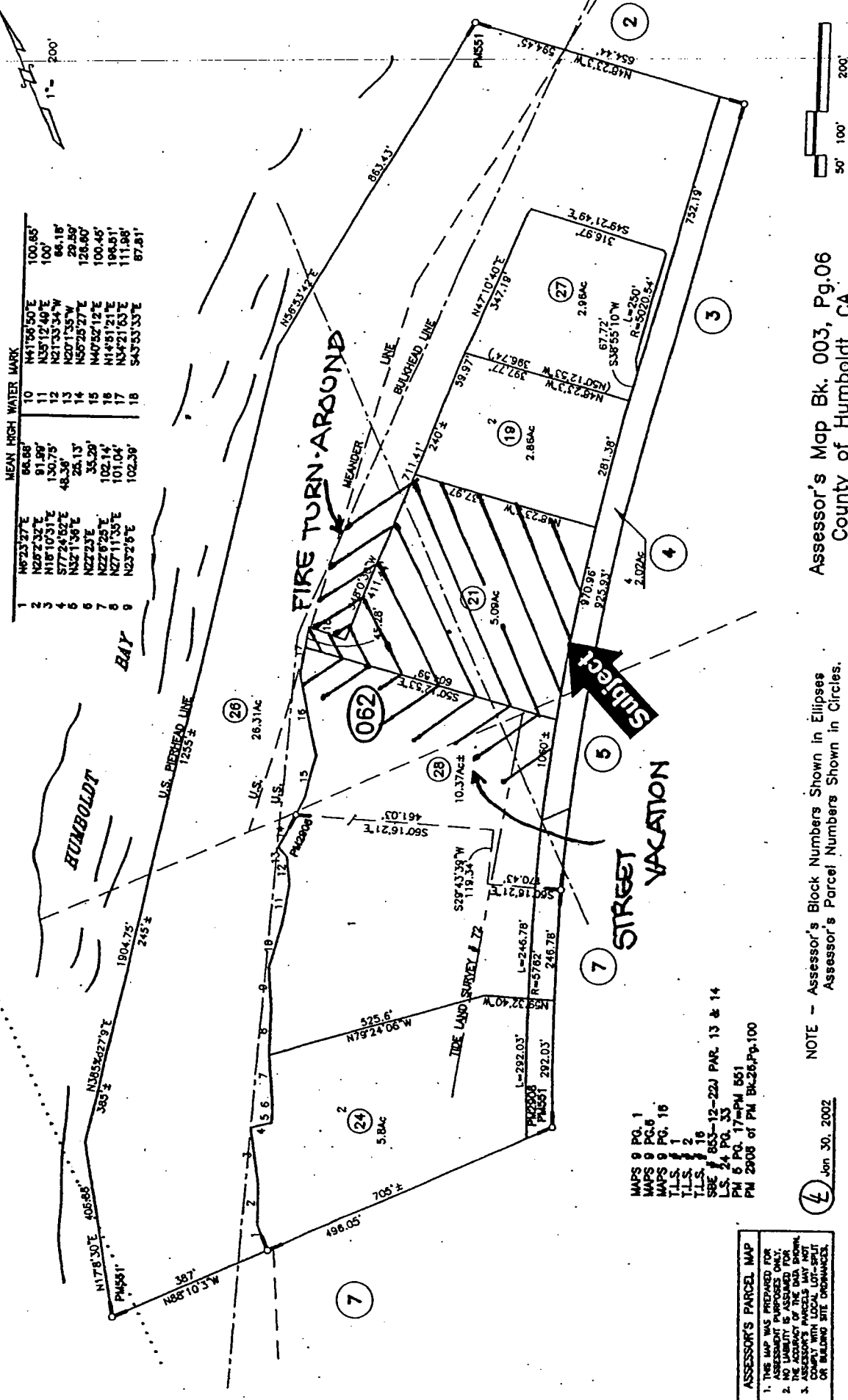
Engineering, Public Works, Fire, and Community Development Departments.

17. Design Review (Site Plan review) shall be completed prior to the installation of any dedicated fire lanes/access roads to the satisfaction of the Engineering, Public Works, Fire, and Community Development Departments.

End Exhibit "B"



MEAN HIGH WATER MARK	
1	N47°23'27"E
2	N25°23'27"E
3	N25°23'27"E
4	N18°10'31"E
5	S77°24'52"E
6	N52°1'56"E
7	N27°23'E
8	N27°6'25"E
9	N27°11'35"E
10	N41°50'50"E
11	N35°12'40"E
12	N21°33'34"W
13	N20°1'35"W
14	N55°25'27"E
15	N47°52'12"E
16	N14°51'21"E
17	N42°1'63"E
18	S43°53'33"E



Assessor's Map Bk. 003, Pg.06
 County of Humboldt, CA.

NOTE - Assessor's Block Numbers Shown in Ellipses
 Assessor's Parcel Numbers Shown in Circles.

4 Jan 30, 2002

ASSessor's PARCEL MAP
 1. THIS MAP WAS PREPARED FOR
 THE CITY OF EUREKA, CALIFORNIA.
 2. NO LIABILITY IS ASSUMED FOR
 THE ACCURACY OF THE DATA SHOWN.
 3. ASSessor's PARCELS MAY NOT
 CORRELATE WITH LOCAL UTILITIES
 OR EXISTING SITE CONDITIONS.

MAPS 9 PG. 1
 MAPS 9 PG. 16
 T.L.S. 1
 T.L.S. 2
 T.L.S. 16
 SBE 853-12-22J PAR. 13 & 14
 L.S. 24 PG. 33
 PM 6 PG. 17-PM 551
 PM 2908 of PM Bk.28,Pg.100

LEGEND

- UTILITY / POWER POLE
- WATER HYDRANT
- FIRE HYDRANT (CH)
- EXISTING PROJECT PROPERTY LINES
- EXISTING LINE
- STREET LIGHT
- WATER MAIN
- WATER LINE
- ELECTRIC CABLE / CONDUIT
- FENCE
- TREE
- LOW MAINTENANCE BUSH
- PROPOSED SIDEWALK
- DOLPHIN

ABBREVIATIONS

- EXISTING
- PROPOSED
- PROPERTY LINE
- RIGHT OF WAY
- FIRE HYDRANT
- POWER POLE
- DRAIN INLET
- UTILITY POLE
- CLEAN OUT
- TYPICAL
- SIDEWALK

STREET TO
BE VACATED
UNDER
SEPARATE
PERMIT

003-062-021

DAVID L. SCHNEIDER
003-062-021

WEST
WASHINGTON
STREET

WEST WATERFRONT DRIVE 80' WIDE

HUMBOLDT BAY

DOCK B

DOCK B

RECEIVED
FEB 26 2015
DEPARTMENT OF
COMMUNITY DEVELOPMENT

REVISIONS

1	003-062-021
---	-------------

DAVID L. SCHNEIDER
ENGINEER
003-062-021

SITE PLAN

003-062-021
WEST WATERFRONT DRIVE
BUREAU, CA 94025

1

AGENDA SUMMARY

RE: PUBLIC HEARING - UNMET TRANSIT NEEDS **For Agenda Date: April 19, 2011**

Agenda Item No:

2

RECOMMENDATION:

1. Open public hearing regarding unmet transit needs within Eureka city limits.
2. Close public hearing.
3. Direct staff to forward a transcript of comments to the Humboldt County Association of Governments (HCAOG) for inclusion in the 2010-11 Unmet Needs Report of Findings.

SUMMARY OF THE ISSUE:

State law requires HCAOG to annually evaluate the unmet transit needs within its jurisdiction and prepare a report of its findings. As part of the process, entities receiving Transportation Development Act (TDA) funds may conduct separate hearings to gather input as to any unmet needs within the area. The information gathered at tonight's public hearing will be forwarded to HCAOG for consideration of these needs, if any, and for inclusion in the Unmet Needs Report of Findings for 2010-11.

Staff recommends you hold a public hearing, accept comments & testimony regarding any unmet transit needs within the City of Eureka area, and at its conclusion direct staff to forward a transcript of comments to the Humboldt County Association of Governments (HCAOG) for inclusion in the Unmet Needs Report of Findings for 2010-11.

FISCAL IMPACT:

No fiscal impact.

DH SIGN:



Finance Director

CM SIGN:



City Manager

REVIEWED BY:

City Attorney

DATE:

4/12/11

INITIALS:

WLB/LS

COUNCIL ACTION:

Ordinance No.

Resolution No.

AGENDA SUMMARY**RE: AMENDMENTS TO THE MEDICAL CANNABIS
ORDINANCE****FOR AGENDA DATE: APRIL 19, 2011
AGENDA ITEM No.:**

3

RECOMMENDATION:

1. Hold a Public Hearing
2. Waive reading and introduce, read by Title only, Bill No. 835 -C.S., AN ORDINANCE OF THE CITY OF EUREKA AMENDING TITLE 15 CHAPTER 158 MEDICAL CANNABIS: CULTIVATION, PROCESSING AND DISTRIBUTION.

SUMMARY:

On March 15, 2011, the City Council requested that Staff prepare modifications to the adopted Medical Cannabis Ordinance to:

- Reduce the number of distribution sites allowed for a cultivation/ processing/ distribution facility to one, which may be located either at or separate from the cultivation and processing site.
- Make clear that a Collective/Cooperative must be invited by the City Council to submit a Conditional Use Permit, and that the City Council may invite fewer than six Collectives/Cooperatives.
- Prohibit facilities in a structure that fronts on or only has access from Broadway, 4th or 5th Streets.
- Prohibit the exterior display of live plants or graphic representations of the cannabis plant.
- Limit the size, number and content of exterior signage.

ATTACHMENTS:

Attachment 1 Bill No. ____ -C.S., AN ORDINANCE OF THE CITY OF EUREKA AMENDING TITLE 15 CHAPTER 158 MEDICAL CANNABIS: CULTIVATION, PROCESSING AND DISTRIBUTION

Staff report prepared by Kristen M. Goetz, Assistant Planner

Continued page 2

FISCAL IMPACT: None with this action**DEPARTMENT HEAD SIGNATURE:**


Lisa D. Shikany

Interim Director of Community Development

CITY MANAGER SIGNATURE:


David W. Tyson

City Manager

REVIEWED BY:

Assistant City Manager
City Attorney

DATE:

4-13-11
4-13-11

INITIALS:

MK
PH

Council Action:

Ordinance No. _____

Resolution No. _____

Discussion:

On March 17, 2011, the City Council held a Special Meeting to review and comment on the draft amendments prepared by Staff. The City Council made modifications to the draft amendments and directed that they be sent to the Planning Commission as required by law for the Commission's review and recommendation back to the City Council.

Below is a summary of the draft amendments to the attached Medical Cannabis Ordinance.

§158.004

Provides greater explanation of what constitutes the size of the cultivation area.
Provides greater explanation of what constitutes the size of the processing area.
Includes definition of "Primary Caregiver"

§158.010

Makes minor modifications to cultivation for personal use.

§158.011

Specifies that the production area for personal use cannot cumulatively exceed 20 square feet.

§158.021(A)

Reduces the number of distribution sites for a cultivation/processing facility to one, which may be located either at or separate from the cultivation/processing site.

§158.021 (E)

Removes allowance for distribution facilities not associated with a cultivation/processing facility.

§158.021(C)

Makes clear that a Collective/Cooperative must be invited by the City Council to submit a Conditional Use Permit, and that the City Council may invite fewer than six to apply.

§158.022(A)

Removes from Chapter 158 the specified zoning districts in which cultivation and processing is conditionally permitted. These have been replaced by the draft amendments to the specified zoning district regulations.

Requires that a cultivation or processing facility on Broadway, 4th or 5th Streets must be inconspicuous and not draw attention to the use of the building.

§158.022(C)

Provides clarification of cultivation/production in connection with a research, testing lab, or similar facilities.

§158.022(E)(4)

Includes “primary caregiver” as receiver of medical cannabis.

§158.022(F)(4)

Prohibits the exterior display of live plants or graphic representations of the cannabis plant.

§158.022(F)(5), (6), and (7)

Regulates signage.

§158.022(F)(14)

Specifies that the processing of medical cannabis into foodstuffs and other edibles must comply with laws regulating the commercial preparation of food.

§158.022(F)(15)

Prohibits the packaging of foodstuffs and other edibles that would mimic candy or cookies or other items that would attract children.

§158.023(A)

Removes from Chapter 158 the specified zoning districts in which distribution is conditionally permitted. These have been replaced by the draft amendments to the specified zoning district regulations.

Prohibits distribution facilities located on Broadway, 4th or 5th Streets from having a storefront or patient entrance facing Broadway, 4th or 5th Streets.

§158.023 (F)(1)

Provides clarification regarding location of distributions facilities near facilities that primarily serve children.

§158.023 (F)(6)

Provides for a distribution facility to distribute medical cannabis to a primary caregiver.

§158.023(F)(9)

Prohibits the exterior display of live plants or graphic representations of the cannabis plant.

§158.023(F)(10), (11), and (12)

Regulates signage.

§158.025

Adds a section on inspections and monitoring.

§155.051, §155.055, §155.078, §155.099, §156.068, §156.074, §156.077, and §156.078

Includes Medical Cannabis facilities as conditionally permitted uses in specified zoning districts as approved under the adopted Medical Cannabis Ordinance - these amendments replace §158.022(A) and 158.023(A). There are not changes to where Medical Cannabis facilities may be located.

FINDING:

In order to amend the Medical Cannabis Ordinance a finding must be made that the proposed amendments are consistent with the objectives of the zoning regulations as prescribed in §155.002 of Eureka Municipal Code. The zoning regulations are adopted to protect the public health, safety, peace, comfort, convenience, prosperity, and general welfare.

The purpose and intent of the Medical Cannabis Ordinance is to regulate the cultivation, processing and distribution of medical cannabis within city limits specifically to protect the public health, safety and welfare of the community. As such, the purpose of the Medical Cannabis Ordinance is consistent with the purpose of Chapter 155.

On April 18, 2011, the Planning Commission took action to find and determine that the draft amendments to the Medical Cannabis Ordinance are consistent with the objectives of the zoning regulations found in section 155.002. Staff, therefore, has determined that the City Council can make the finding that the modifications to the Medical Cannabis Ordinance are consistent with the objectives of the zoning regulations.

Environmental: Amending the text of the Eureka Municipal Code is a “project” for the purposes of the California Environmental Quality Act (CEQA). Adoption in 2010 of the Medical Cannabis Ordinance was found to be exempt from CEQA under CEQA Guidelines Section 15061, which is a general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. It was determined that because the Medical Cannabis Ordinance requires a Conditional Use Permit for establishment of a medical cannabis facility that the Ordinance would have no possibility of having a significant effect on the environment. Because the amendments to the Ordinance are not more permissive than the adopted Ordinance itself, it is clear that the amendments will also have no significant effect on the environment.

**AN ORDINANCE OF THE CITY OF EUREKA AMENDING TITLE 15 CHAPTER 158
MEDICAL CANNABIS: CULTIVATION, PROCESSING AND DISTRIBUTION**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EUREKA AS FOLLOWS:

Section 1.

Title 15, Chapter 158, Section, is hereby amended to read as follows:

**CHAPTER 158: MEDICAL CANNABIS: CULTIVATION, PROCESSING AND
DISTRIBUTION**

Section

General Provisions

- 158.001 Findings and purpose
- 158.002 Interpretation and applicability
- 158.003 Release of liability and hold harmless
- 158.004 Definitions
- 158.005 Severability

Personal Use - Requirements & Regulations

- 158.010 Cultivation
- 158.011 Processing
- 158.012 Distributing

Cooperatives & Collectives - Requirements & Regulations

- 158.020 Offices and Labs
- 158.021 Number of Facilities
- 158.022 Cultivation or processing
- 158.023 Distributing
- 158.024 Delivery Services
- 158.025 Inspection and Monitoring

Permits

- 158.030 Fees and taxes
- 158.031 Enforcement

Non-medical Marijuana Use – Requirements & Regulations

158.040 Personal Use Cultivation, Processing, and Distributing

GENERAL PROVISIONS

§ 158.001 FINDINGS AND PURPOSE.

(A) The City Council of the City of Eureka, based on evidence presented to it in the proceedings leading to the adoption of this ordinance hereby finds that the cultivation, processing and distribution of medical cannabis in the City of Eureka has caused and is causing ongoing impacts to the community. These impacts include damage to buildings containing indoor grows, including improper and dangerous electrical alterations and use, inadequate ventilation leading to mold and mildew, increased frequency of home-invasion robberies and similar crimes, and that many of these impacts have fallen disproportionately on residential neighborhoods. These impacts have also created an increase in response costs, including code enforcement, building, land use, fire, and police staff time and expenses.

(B) The City Council of the City of Eureka also acknowledges that the voters of the State of California have provided a criminal defense to the cultivation, possession and use of cannabis for medical purposes under the Compassionate Use Act, but that the Compassionate Use Act does not address land use or building code impacts or issues arising from the resulting increase in cannabis cultivation within the City.

(C) The purpose and intent of this chapter is to regulate the cultivation, processing and distribution of medical cannabis in a manner that protects the public health, safety and welfare of the community and mitigates for the costs to the community of the oversight of these activities.

§ 158.002 INTERPRETATION AND APPLICABILITY.

(A) No part of this ordinance shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. section 800 et seq., nor to otherwise permit any activity that is prohibited under that Act or any other local, state or federal law, statute, rule or regulation. The cultivation, processing and distribution of medical cannabis in the City of Eureka is controlled by the provisions of this chapter of the Eureka Municipal Code. Accessory uses and home occupations, where medical cannabis is involved shall be governed by the provisions of this chapter.

(B) Nothing in this ordinance is intended, nor shall it be construed, to burden any defense to criminal prosecution otherwise afforded by California law.

(C) Nothing in this ordinance is intended, nor shall it be construed, to preclude a landlord from limiting or prohibiting cannabis cultivation, smoking or other related activities by tenants.

(D) Nothing in this ordinance is intended, nor shall it be construed, to exempt any cannabis related activity from any and all applicable local and state construction, electrical, plumbing, land use, or any other building or land use standards or permitting requirements.

(E) Nothing is this ordinance is intended, nor shall it be construed, to make legal any cultivation, transportation, sale, or other use of cannabis that is otherwise prohibited under California law.

(F) All cultivation, processing and distribution of medical cannabis within city limits shall be subject to the provisions of this chapter, regardless if the cultivation, processing or distribution existed or occurred prior to adoption of this chapter.

§ 158.003 RELEASE OF LIABILITY AND HOLD HARMLESS.

As a condition of approval of any conditional use permit approved for a medical cannabis cultivation, processing, and/or distribution facility, the owner or permittee of each medical cannabis collective, cooperative, cultivation, processing or distribution facility shall indemnify and hold harmless the City of Eureka and its agents, officers, elected officials, and employees for any claims, damages, or injuries brought by adjacent or nearby property owners or other third parties due to the operations at the collective, cooperative, cultivation, processing or distribution facility, and for any claims brought by any of their clients for problems, injuries, damages, or liabilities of any kind that may arise out of the cultivation, processing or distribution of medical cannabis.

§ 158.004 DEFINITIONS.

DWELLING UNIT. A room or group of rooms (including sleeping, eating, cooking, and sanitation facilities, but not more than one kitchen), which constitutes an independent housekeeping unit, occupied or intended for occupancy by one household on a long-term basis.

FACILITIES.

MEDICAL CANNABIS CULTIVATION FACILITY. A facility at which medical cannabis is grown and harvested for supply to a **MEDICAL CANNABIS PROCESSING FACILITY** and/or a **MEDICAL CANNABIS DISTRIBUTION FACILITY**.

MEDICAL CANNABIS DISTRIBUTION FACILITY. Any facility or location where the primary purpose is to distribute medical cannabis is distributed as a medication upon recommendation by a physician and where medical cannabis is made available to or distributed by or to a primary caregiver or a qualified patient in strict accordance with the Compassionate Use Act of 1996 (California Health and Safety Code Section 11362.5 et seq.).

MEDICAL CANNABIS PROCESSING FACILITY. A facility at which medical cannabis is processed for supply to a **MEDICAL CANNABIS DISTRIBUTION FACILITY**.

MEDICAL CANNABIS. (also known as *medical marijuana*) Cannabis, including constituents of cannabis, THC and other cannabinoids, used as a physician-recommended form of medicine or herbal therapy.

MEDICAL CANNABIS COOPERATIVE OR COLLECTIVE. Any person, association, cooperative, affiliation, or collective of persons who provide education, referral, or network services, and/or facilitation or assistance in the cultivation, processing or distribution of medical cannabis.

~~**MEDICAL CANNABIS CULTIVATION FACILITY.** A facility at which medical cannabis is grown and harvested for supply to a **MEDICAL CANNABIS PROCESSING FACILITY** and/or a **MEDICAL CANNABIS DISTRIBUTION FACILITY**.~~

MEDICAL CANNABIS CULTIVATION AREA. The maximum dimensions allowed used for the growing cultivation and processing of medical cannabis. For the purpose of this chapter, the allowable cultivation area shall apply to be the cumulative gross area used for cultivation of medical cannabis and shall be calculated using either (a) the outward edge of the trays, pots or other containers used for cultivation or (b) the vegetative canopy, whichever is greater.

MEDICAL CANNABIS DISTRIBUTION. The supply to a qualified patient by any person, including a primary caregiver, cooperative or collective, of medical cannabis that is not grown in the qualified patient's residence.

~~**MEDICAL CANNABIS DISTRIBUTION FACILITY.** Any facility or location where the primary purpose is to distribute medical cannabis as a medication upon recommendation by a physician and where medical cannabis is made available to or distributed by or to a primary caregiver or a qualified patient in strict accordance with the Compassionate Use Act of 1996 (California Health and Safety Code Section 11362.5 et seq.).~~

MEDICAL CANNABIS PROCESSING. Medical cannabis processing includes, but is not limited to: manicuring, drying, curing, pressing, cooking, baking, infusing, grinding, bagging, packaging, rolling.

MEDICAL CANNABIS PROCESSING AREA. The maximum dimensions used for the processing of medical cannabis. For the purpose of this chapter, the allowable processing area shall be the cumulative gross floor area used for processing medical cannabis. Where the processing area occupies the majority of a room or rooms, the processing area shall be calculated as the total gross floor area of the room or rooms used for processing medical cannabis.

~~**MEDICAL CANNABIS PROCESSING FACILITY.** A facility at which medical cannabis is processed for supply to a **MEDICAL CANNABIS DISTRIBUTION FACILITY**.~~
PRIMARY CAREGIVER. As defined in California Health and Safety Code Section 11362.7 et seq., and as it may be amended from time to time.

QUALIFIED PATIENT. As defined in California Health and Safety Code Section 11362.7 et seq., and as it may be amended from time to time.

RESIDENCE. A legal dwelling unit.

§ 158.005 SEVERABILITY

If any part of this ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions-parts of this ordinance.

PERSONAL USE - REQUIREMENTS & REGULATIONS

§ 158.010 CULTIVATION.

(A) A qualified patient shall be allowed to cultivate medical cannabis for their own personal use. The medical cannabis cultivation ~~in an area shall not to cumulatively~~ exceed 50 square feet per residence. Cultivation of medical cannabis for personal use shall be in conformance with the following standards:

(1) The residence shall remain at all times a residence with legal and functioning cooking, sleeping and sanitation facilities. Medical cannabis cultivation shall remain at all times secondary to the residential use of the property;

(2) The qualified patient shall reside in the residence where the medical cannabis cultivation occurs;

(3) Cultivation of medical cannabis for personal use shall occur only on the parcel either within the residence occupied by the qualified patient, or in a self-contained accessory building that is secured, locked, and fully enclosed and which is for the exclusive use of the qualified patient. Cultivation of medical cannabis for personal use shall not displace required off-street parking;

(4) The medical cannabis cultivation area shall not exceed 50 square feet and shall not exceed 10 feet in height per residence, regardless if cultivated within the residence or in an accessory building unless an exception request is obtained per section 158.010(B);

(5) If required by Building or Fire Code, the wall(s) adjacent to the cultivation area shall be constructed with 5/8" Type X moisture resistant drywall;

(6) The medical cannabis cultivation area shall be in compliance with the current adopted edition of the California Building Code section 1203.4 Natural Ventilation or section 402.3 Mechanical Ventilation (or its equivalent(s));

(7) The cultivation of medical cannabis shall not adversely affect the health or safety of the residents, the residence or accessory building in which it is cultivated, or nearby properties through creation of mold, mildew, dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, surface runoff, or other impacts, or be hazardous because of the use or storage of materials, processes, products or wastes;

(8) Medical cannabis cultivation lighting shall not cumulatively exceed 1200 watts unless an exception request is obtained per section 158.010(B);

(9) All electrical equipment used in the cultivation of medical cannabis, (e.g., lighting and ventilation) shall be plugged directly into a wall outlet or otherwise hardwired; the use of extension cords to supply power to electrical equipment used in the cultivation of medical cannabis is prohibited;

(10) Any electrical wiring/rewiring shall first require an electrical permit from the Building Department;

(11) The use of gas products (e.g., CO₂, butane, etc.) for medical cannabis cultivation is prohibited unless an exception request is obtained per section 158.010(B); and

(12) From a public right of way, there shall be no exterior evidence of medical cannabis cultivation occurring at the property.

(B) The medical cannabis cultivation area may exceed the 50 square foot maximum per residence, up to a total of 100 square feet of cultivation area, or the standards in section 158.010(A)(4)(8) or (11) above may be modified, upon approval of an Exception Request issued by the Director of Community Development. An Exception Request shall not allow more than a total of 100 square feet per residence regardless if cultivated within the residence or an accessory building.

(1) An application for an Exception Request shall include the following information

(a) Written permission from the property owner;

(b) An application fee set by resolution of the City Council;

(c) Adequate information and documentation, such as a physician's recommendation, or verification of more than one qualified patient living in the residence, to demonstrate why the cultivation area should be allowed to exceed 50 square feet;

(d) The specified location and size of the requested cannabis cultivation area not to exceed 100 square feet and not to exceed 10 feet in height;

(e) A materials storage, handling and disposal plan; and

(f) If the Exception Request includes a request to modify the standards prescribed in section 158.010(A)(4)(8) or (11), documentation and information shall be provided identifying which standards are proposed to be modified and why such modification would not detrimentally affect the use of the dwelling unit for its intended residential occupancy.

(2) If required by Building or Fire Code, the applicant shall make specified improvements to the residence with a Building Permit, if one is needed. Such improvements may include, but are not limited to, electrical system upgrades.

(3) The Director of Community Development in consultation with the Chief Building Official and Fire Marshal shall review the submitted application and determine if the specific circumstances warrant granting an Exception Request.

(4) The Exception Request shall become void, and the cannabis cultivation area in excess of 50 square feet shall be removed one year following the date on which the Exception Request was issued unless the Exception Request is renewed prior to expiration.

(C) Medical cannabis cultivation is prohibited as a Home Occupation. Medical cannabis cultivation shall not be considered a residential accessory use. No distribution of medical cannabis cultivated for personal use shall be allowed.

§ 158.011 PROCESSING.

(A) A qualified patient shall be allowed to process medical cannabis cultivated within his/her private residence. The medical cannabis processing area shall not cumulatively exceed 20 square feet per residence. Processing of medical cannabis cultivated at the residence shall be in conformance with the following standards:

(1) Only medical cannabis cultivated at the residence in conformance with this chapter shall be allowed to be processed at the residence;

(2) The residence shall remain at all times a residence with legal and functioning cooking, sleeping and sanitation facilities. Medical cannabis processing shall remain at all times secondary to the residential use of the property;

(3) The medical cannabis processing shall be in compliance with the current adopted edition of the California Building Code section 1203.4 Natural Ventilation or section 402.3 Mechanical Ventilation (or its equivalent(s));

(4) The use of gas products (e.g., CO₂, butane, etc.) for medical cannabis processing is prohibited; and

(5) The processing of medical cannabis shall not adversely affect the health or safety of the residents, the residence or accessory building in which it is processed, or nearby properties through creation of mold, mildew, dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, surface runoff, or other impacts, or be hazardous because of the use or storage of materials, processes, products or wastes.

(B) Medical cannabis processing is prohibited as a Home Occupation. Medical cannabis processing shall not be considered a residential accessory use. No sale or distributing of medical cannabis processed for personal use shall be allowed.

§ 158.012 DISTRIBUTING.

Medical cannabis cultivated or processed for personal use as provided for in this chapter shall not be distributed to any person, cooperative or collective unless specifically allowed under this chapter.

COOPERATIVES & COLLECTIVES - REQUIREMENTS & REGULATIONS

§ 158.020 OFFICES AND LABS

(A) *Offices.* Offices for a cooperative or collective at which no cultivation, processing, storage, handling or distributing of cannabis, in any form, occurs shall be allowed in any zoning district in which offices are allowed. Such offices shall be subject to all regulations and standards applicable to offices as prescribed in the Zoning Regulations of the Eureka Municipal Code.

(B) *Medical Research Labs and Testing Facilities.* Medical cannabis research labs or medical cannabis testing facilities at which no cultivation, processing, or distribution of medical cannabis occurs shall be allowed in any zoning district in which laboratories or medical laboratories are permitted. Such facilities shall be subject to all regulations and standards applicable to labs or medical labs as prescribed in the Zoning Regulations of the Eureka Municipal Code.

§ 158.021 NUMBER OF FACILITIES.

(A) There shall be a maximum of four (4) cultivation/processing facilities permitted within city limits. ~~E; each of the cultivation/processing facilities shall be allowed a maximum of one two distribution facilities facility located within city limits which may be located separate from or at the same site where the cultivation and processing occurs. The cultivation/processing facilities may each have one off-site distribution facility. If the cultivation/processing facility has two distribution facilities, one must be located on-site with the cultivation/processing facility.~~

(B) ~~A maximum of two distribution facilities not associated with any of the four permitted cultivation/processing facilities shall be allowed within city limits. No distribution facilities shall be allowed unless associated with a cultivation/processing facility, pursuant to 158.021(A).~~

(C) ~~Only those Collectives or Cooperatives invited by the City Council may submit an application for a conditional use permit. The City Council shall establish the process for the selection of the Collectives or Cooperatives to be invited to submit an application for a conditional use permit. The City Council may elect to invite fewer than the number described in section 158.021(A) and (B). The selection process for the cultivation/processing and distribution facilities shall be established by the City Council.~~

§ 158.022 CULTIVATION OR PROCESSING.

(A) ~~Cultivation or processing facilities for distribution shall be allowed only in the Agriculture (A), Coastal Agriculture (AC), Service Commercial (CS), Limited Industrial (ML) or General Industrial (MG) zone districts. A cultivation or processing facility which is (a) located on Broadway, 4th or 5th Streets and (b) is not on the same site as its associated medical cannabis distribution facility shall be inconspicuous and shall not draw attention to the use of the building as a medical cannabis cultivation or processing facility. A cultivation or processing facility located on the same site as its associated distribution facility shall comply with the requirements contained in section 158.023(B).~~

(B) Cultivation or processing facilities shall only be allowed upon the granting of a conditional use permit as prescribed in the Eureka Municipal Code. The fact that an applicant possesses other types of state or City permits or licenses does not exempt the applicant from the requirement of obtaining a conditional use permit to operate a cultivation or processing facility for distribution.

(C) Research, testing, or other similar facilities that cultivate medical cannabis for distribution to patients or primary caregivers shall be considered, for the purpose of this chapter, a cultivation or processing facility and shall be subject to all applicable regulations and limitations for a cultivation or processing facility.

(D) In addition to the conditional use permit required under section 158.022(B), a cultivation or processing facility located in the coastal zone shall only be allowed upon the granting of a coastal development permit as prescribed in the Eureka Municipal Code.

(E) In addition to the application requirements specified for a conditional use permit, an application for a conditional use permit for a cultivation or processing facility shall include the following information:

(1) Authorization for the City, its agents and employees, to seek verification of the information contained within the application;

(2) Text and graphic materials showing the site and floor plan for the medical cannabis cultivation or processing facility including the use of each room or building on the premises. The material shall also describe or illustrate the location and uses of adjacent structures and properties;

(3) The equipment and methods employed in the cultivation or processing of the medical cannabis;

(4) How the cultivated and/or processed medical cannabis will be transported to the distribution facility and/or to qualified patients or primary caregivers;

(5) The hours and days of the week the medical cannabis cultivation or processing facility will be open;

(6) The number of persons, per shift, who will be working at the cultivation or processing facility;

(7) The security measures that will be employed at the premises, including but not limited to: lighting, alarms, and automatic law enforcement notification;

(8) The measures taken to minimize or offset energy use from the cultivation or processing of medical cannabis;

(9) The chemicals stored or used at the premises;

(10) The type and quantity of all effluent discharged into the City's wastewater and/or stormwater system;

(11) The name, location and operator of the distribution facility(ies) for which the medical cannabis is being cultivated or processed; and

(12) Any other information required by the Director of Community Development relevant to the ordinance.

(F) Cultivation or processing facilities shall be subject to the following specific regulations:

(1) The cultivation area shall occur only within a self-contained structure that is in compliance with California Building Code section 1203.4 Natural Ventilation or section 402.3 Mechanical Ventilation (or its equivalent(s));

(2) The cultivation or processing facility shall comply with stormwater, wastewater, and other applicable requirements of the City;

(3) The required number of off-street parking spaces shall be determined by the Planning Commission. The location of off-street parking shall be in compliance with the parking regulations prescribed in the Eureka Municipal Code;

~~(4) The on-site display of cannabis plants visible from the outside shall be prohibited, including live plants or graphic representations of the cannabis plant, except for signs approved in compliance with the sign regulations prescribed in the Eureka Municipal Code, shall not be allowed at the cultivation or processing facility;~~

~~(5) There shall be no off-site signage advertising the medical cannabis facility;~~

~~(6) Signs shall not be internally illuminated, either internally or externally;~~

~~(7) There shall be no signage on the frontage of buildings facing Broadway, 4th or 5th Streets, or in front of buildings facing Broadway, 4th or 5th Streets;~~

~~(8) The display or sale of paraphernalia employed in the use or consumption of medical cannabis shall not be allowed at the cultivation or processing facility;~~

~~(9) Cultivation or processing facilities shall maintain all necessary permits, and pay all appropriate taxes;~~

~~(10) Cultivation or processing facilities shall provide invoices to vendors to ensure vendor's tax liability responsibility;~~

~~(11) A cultivation or processing facility located off-site from the its associated medical cannabis distribution facility shall not distribute medical cannabis from the cultivation or processing site unless permitted in the conditional use permit;~~

~~(12) The cultivation or processing of medical cannabis shall not adversely affect the health or safety of the employees, or the facility in which it is cultivated or processed, or nearby properties through creation of mold, mildew, dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, or be hazardous because of the use or storage of materials, processes, products or wastes;~~

(13) There shall be no on-site use or consumption of medical cannabis unless specifically authorized in the conditional use permit; and

(14) The processing of medical cannabis into foodstuffs and other edibles by cooking, baking, infusing, grinding, etc., shall comply with the provisions of all relevant local and State laws for the commercial preparation of food.

~~(10)(15)~~ The packaging of edibles and other similar products shall be nondescript and shall not mimic, resemble or be representational of candy, cookies or other food products that might attract or entice children; and

~~(11)(16)~~ Medical cannabis cultivation or processing facilities shall comply with other conditions prescribed in the approved conditional use permit.

(G) The conditional use permit ~~approved~~ granted for a cultivation or processing facility may be suspended or revoked based on a finding that the facility has a history of multiple or any serious violations of this ordinance, or as otherwise prescribed for all other conditional use permits in the Eureka Municipal Code.~~may be suspended or revoked as prescribed for all other conditional use permits in the Eureka Municipal Code.~~

(H) The rights of an approved conditional use permit for a cultivation or processing facility shall be granted to the permittee at the specified location described in the conditional use permit. The conditional use permit for a cultivation or processing facility shall not be transferred to another permittee or to another location.

(I) The conditional use permit shall remain in effect as long as the specified cultivation or processing facility is in operation. A facility that ceases operation for one month or more shall be deemed abandoned and the conditional use permit shall terminate.

§ 158.023 DISTRIBUTING.

(A) Mobile distribution of medical cannabis, other than delivery services described and regulated by section 158.024, is prohibited within city limits.

~~(AB) Medical cannabis distributing facilities shall be allowed only in the Service Commercial (CS), Hospital Medical (HM), Limited Industrial (ML) or General Industrial (MG) zoning districts. A medical cannabis distribution facility located on Broadway, 4th or 5th Streets shall not have a storefront or the patient entrance facing Broadway, 4th or 5th Streets. Mobile distribution of medical cannabis, other than delivery services described and regulated by section 158.024, is prohibited within city limits.~~

(BC) Medical cannabis distribution facilities shall only be allowed upon the granting of a conditional use permit as prescribed in the Eureka Municipal Code. The fact that an applicant possesses other types of state or City permits or licenses does not exempt the applicant from the requirement of obtaining a conditional use permit to operate a medical cannabis distribution facility.

(CD) In addition to the conditional use permit required under section 158.023(BC), a distribution facility located in the coastal zone shall only be allowed upon the granting of a coastal development permit as prescribed in of the Eureka Municipal Code.

(DE) In addition to the application requirements specified for a conditional use permit, an application for a conditional use permit for a distribution facility shall include the following information:

- (1) Authorization for the City, its agents and employees, to seek verification of the information contained within the application;
- (2) Text and graphic materials showing the site and floor plan for the distribution facility including the use of each room or building on the premises. The material shall also describe or illustrate the location and uses of adjacent structures and properties;
- (3) The hours and days of the week the distribution facility will be open;
- (4) The number of persons, per shift, who will be working at the distribution facility;
- (5) The security measures that will be employed at the premises, including but not limited to: lighting, alarms, and automatic law enforcement notification;
- (6) The chemicals stored or used at the premises;
- (7) The type and quantity of all effluent discharged into the City's wastewater and/or stormwater system;
- (8) The name, location and operator of the cultivation or processing facility(ies) supplying the medical cannabis to the distribution facility;
- (9) A detailed Operations Manual containing, at a minimum,
 - (a) The staff screening process including appropriate background checks;
 - (b) The process for tracking medical cannabis quantities and inventory controls;
 - (c) A description of the screening, registration and validation process for qualified patients;
 - (d) A description of qualified patient records acquisition and retention procedures; and
 - (e) The process for tracking medical cannabis quantities and inventory controls including on-site cultivation, processing, and/or medical cannabis products received from outside sources;
- (10) A detailed Cannabis Safety Program, which includes at a minimum, the following,

(a) The process for documenting the chain of custody of all cannabis and cannabis products from farm to patient;

(b) The procedure and documentation process for assuring the safety and quality of all medical cannabis and medical cannabis products effective January 1, 2011, (including, but not limited to, testing for bacteria, mold, pesticides and other contaminants); and

(c) The procedure and documentation process for determining patient dosage including testing for the major active agents in the medical cannabis effective January 1, 2011 (e.g., cannabinoids THC, CBD and CBN).

(11) Any other information required by the Director of Community Development that is relevant to the ordinance.

(EF) Distribution facilities shall be subject to the following specific regulations:

(1) No distribution facility shall be located within 1000 feet ~~from~~ of any existing park, playground, day care facility, school, or similar facility that primarily serves children under 18 years of age, either inside or outside the city limits;

(2) The distribution facility shall consist of a business form that satisfies state law to act cooperatively or collectively in the acquisition and distribution of medical cannabis;

(3) The distribution facility shall display the client rules and/or regulations in a conspicuous place that is readily seen by all persons entering the distribution facility;

(4) Each building entrance to the distribution facility shall be clearly and legibly posted with a notice indicating that smoking, ingesting or consuming medical cannabis on the premises or in the vicinity of the distribution facility is prohibited unless specifically authorized under the conditional use permit;

(5) Each building entrance to the distribution facility shall be clearly and legibly posted with a notice indicating that persons under the age of eighteen (18) are precluded from entering the premises unless they are a qualified patient and/or they are under the supervision of their parent or legal guardian;

(6) The distribution facility shall only distribute medical cannabis to a qualified patient who has a valid, verified physician's recommendation, or the patient's primary caregiver. The distribution facility shall verify that the physician's recommendation is current and valid;

(7) The distribution facility shall not distribute medical cannabis to a qualified patient or primary caregiver more than twice a day;

(8) The distribution facility shall only permit the distribution of live plants, starts and clones as allowed by the approved conditional use permit. Such distribution shall be limited to qualified patients or primary caregivers;

(9) The on-site display of cannabis plants visible from the outside shall be prohibited, including live plants or graphic representations of the cannabis plant;

(10) There shall be no off-site signage advertising the medical cannabis facility;

(11) Signs shall not be internally illuminated, either internally or externally;

(12) There shall be no signage on the frontage of buildings facing Broadway, 4th or 5th Streets, or in front of buildings facing Broadway, 4th or 5th Streets;

~~(9) , except for signs approved in compliance with the sign regulations prescribed in the Eureka Municipal Code, shall not be allowed at the distribution facility unless specifically prescribed in the approved conditional use permit;~~

~~(10)(13)~~ The display or sale of paraphernalia employed in the use or consumption of medical cannabis shall not be allowed at the distribution facility unless specifically prescribed in the approved conditional use permit;

~~(11)(14)~~ The required number of off-street parking spaces shall be determined by the Planning Commission. The location of off-street parking shall be in compliance with the parking regulations prescribed in the Eureka Municipal Code;

~~(12)(15)~~ Distribution facilities shall maintain all necessary permits, and pay all appropriate taxes;

~~(13)(16)~~ Distribution facilities shall provide invoices to vendors to ensure vendor's tax liability responsibility;

~~(14)(17)~~ The distribution of medical cannabis shall not adversely affect the health or safety of the employees or the facility in which it is distributed, or nearby properties through creation of mold, mildew, dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, or be hazardous because of the use or storage of materials, processes, products or wastes;

~~(15)(18)~~ Each and every package or unit of medical cannabis, or medical cannabis product, distributed shall have a label or labels that state the following:

- (a) The name of the patient;
- (b) The name and contact information of the distributor;
- (c) An identification and tracking number for the specific package or unit of medical cannabis, or medical cannabis product;
- (d) The species or strain of the medical cannabis;
- (e) Identification of the strength and dosage of the medical cannabis;

(f) A statement that the medical cannabis or medical cannabis product has been tested for safety and quality assurance and that the testing results, and chain of custody information is available by contacting the distributor;

~~(46)(19)~~ There shall be no on-site use or consumption of medical cannabis unless specifically authorized in the conditional use permit; and

~~(17)(20)~~ Distribution facilities shall comply with other conditions prescribed in the approved conditional use permit.

(FG) In addition to the findings specified for a conditional use permit, the Planning Commission shall consider the following when deciding to approve a conditional use permit for a distribution facility:

(1) If the proposed distribution facility is within a 300 feet of a residential zoning district either inside or outside the city limits, the potential impacts of the distribution facility on the residents and infrastructure of that district; and

(2) If the proposed distribution facility is within 1000 feet of any other distribution facility, either inside or outside the city limits, the cumulative impacts of the proposed distribution facility on the residents, businesses and infrastructure in the vicinity of the proposed distribution facility.

(GH) The conditional use permit ~~approved~~ granted for a distribution facility may be suspended or revoked based on a finding that the facility has a history of multiple or any serious violations of this ordinance, or as otherwise prescribed for all other conditional use permits in the Eureka Municipal Code.

(HI) The rights of an approved conditional use permit for a distribution facility shall be granted to the permittee at the specified location described in the conditional use permit. The conditional use permit for a distribution facility shall not be transferred to another permittee or to another location.

(IJ) The conditional use permit shall remain in effect as long as the specified distribution facility is in operation. A facility that ceases operation for one month or more shall be deemed abandoned and the conditional use permit shall terminate.

§ 158.024 DELIVERY SERVICES

(A) A medical cannabis delivery or transportation service that is associated with a permitted distribution facility located within city limits and for which delivery originates from the distribution facility shall only be allowed when the delivery service is described and included in the conditional use permit for the distribution facility.

(B) Delivery or transportation services originating from outside city limits and delivering medical cannabis within city limits shall only be allowed upon the granting of a Mobile Business License.

(C) Delivery or transportation services originating from within city limits, but not from a permitted distribution facility are prohibited.

~~____ (D) No part of this section shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. section 800 et seq., nor to otherwise permit any activity that is prohibited under that Act or any other local, state or federal law, statute, rule or regulation.~~

§ 158.025 INSPECTION AND MONITORING

(A) The Community Development Department shall inspect each medical cannabis facility on or before January 31st of each calendar year to assure compliance with the approved conditional use permit. The Community Development Department inspector shall be granted access to all parts of the facility. All records kept pursuant to the approved conditional use permit shall be open for visual inspection.

(B) The permittee shall submit to the City on or before January 31st of each calendar year an annual inspection fee set by resolution of the City Council.

(C) If the permittee fails to submit the inspection fee, refuses inspection, or if the inspection finds that the facility is not being operated in compliance with the approved conditional use permit, the conditional use permit shall be subject to revocation pursuant to the provisions of section 155.294.

PERMITS

§ 158.030 FEES AND TAXES

The costs to the City arising from the processing and oversight of Exception Requests under section 158.010, subdivision (B) and permits for Cooperatives and Collectives and Distribution Facilities under sections 158.022 and 158.023, and the costs of monitoring and ensuring compliance with this Ordinance, will be offset through application fees and annual renewal fees, to be adopted by the City Council by Resolution and updated as necessary from time-to-time. In the administration of the permitting requirements under this Ordinance, the City Manager, or his designee, may require as a condition to granting and renewal of the permits any information reasonably necessary to implement the intent of this Ordinance, to ensure that the cannabis handled under the permit is grown, processed or distributed in a manner not in conflict with this Ordinance, and to ensure that any and all related sales taxes are being properly reported and paid.

§ 158.031 ENFORCEMENT

Any violation of this Ordinance is subject to administrative, civil, or criminal penalties, as set out in Eureka Municipal Code section 10.99, in addition to being subject to other remedies provided by law, including but not limited to, injunctive relief, nuisance abatement action, summary abatement of immediately hazardous conditions, and all other applicable fines, penalties and remedies.

This is an Ordinance adopted to address public health and safety issues, and as such, carries with it an express legislative intent to be interpreted strictly, enforced with an emphasis

on public and community safety, and enforced rigorously in a manner such as to deter further violations.

NON-MEDICAL USE – REQUIREMENTS & REGUATLIONS

§ 158.040 PERSONAL USE CULTIVATION, PROCESSING, AND DISTRIBUTING

The personal cultivation, processing and distributing of cannabis or marijuana for non-medical purposes, to the extent provided by law, shall comply with the Use Requirements and Regulations prescribed in section 158.010 (CULTIVATION), section 158.011 (PROCESSING), and section 158.012 (DISTRIBUTING) contained in this chapter.

§ 155.051 A AGRICULTURAL DISTRICTS.

(D) *Conditional uses.* The following uses shall be permitted upon the granting of a use permit in accord with the provisions of §§ 155.280 through 155.299 of this chapter:

- (25) Accessory structures and uses located on the same site as a conditional use; ~~and~~
- (26) Wireless telecommunication facilities subject to the provisions of Chapter 159; ~~and~~
- (27) Medical cannabis cultivation and processing facilities subject to the provisions of Chapter 158.

§ 155.055 HM HOSPITAL-MEDICAL DISTRICTS.

(D) *Conditional uses.* The following conditional uses shall be permitted upon the granting of a use permit in accord with the provisions of §§ 155.280 through 155.299 of this chapter:

- (7) Timber harvest of less than three acres; ~~and~~
- (8) Wireless telecommunication facilities located within 150 feet of an R District subject to the provisions of Chapter 159; ~~and~~
- (9) Medical cannabis distribution facilities subject to the provisions of Chapter 158.

§ 155.078 PERMITTED AND CONDITIONAL USES.

(A) The following uses shall be permitted uses or conditional uses in a C District provided the symbol P, for permitted uses, or C, for conditional uses which appears in the column beneath of C District:

USES	CN	CP	CC	CS
Medical and orthopedic appliance stores	P	P	P	P
<u>Medical cannabis cultivation, processing and/or distribution facilities subject to the provisions of Chapter 158</u>				<u>C</u>
Meeting halls		P	P	P

§ 155.099 CONDITIONAL USES.

The following conditional uses shall be permitted upon the granting of a use permit in accord with the provisions of §§ 155.280 through 155.299 of this chapter, and the Planning Commission may require the submission of reports by technical consultants or other evidence in addition to the data prescribed in § 155.281 of this chapter:

(A) *ML Limited Industrial Districts.*

(8) Live-work uses, only where the combining zone, LW has been applied to the Limited Industrial Zoning District; ~~and~~

(9) Wireless telecommunication facilities located within 100 feet of an R District subject to a wireless telecommunication facility permit issued pursuant to Chapter 159-; and

(10) Medical cannabis cultivation, processing and/or distribution facilities subject to the provisions of Chapter 158.

(B) *MG General Industrial Districts.*

(2) Accessory structures and uses located on the same site as a conditional use; ~~and~~

(3) Wireless telecommunication facilities located within 100 feet of an R District subject to a wireless telecommunication facility permit issued pursuant to Chapter 159-; and

(4) Medical cannabis cultivation, processing and/or distribution facilities subject to the provisions of Chapter 158

§ 156.068 AC — COASTAL AGRICULTURAL DISTRICT.

(D) *Conditional uses.* The following uses shall be permitted upon the granting of a use permit in accord with the provisions of §§ 155.280 through 155.299 of this title:

(6) Wireless telecommunication facilities subject to the provisions of Chapter 159-; and

(7) Medical cannabis cultivation and processing facilities subject to the provisions of Chapter 158

§ 156.074 CS — SERVICE COMMERCIAL DISTRICT.

(D) *Conditional uses.* The following conditional uses shall be permitted upon the granting of a use permit in accord with the provisions of §§ 155.280 through 155.299 of this title:

(20) Veterinarians' offices and small animal hospitals, including operations not conducted within a completely enclosed building, not less than 300 feet from an R or OD District; ~~and~~

(21) Wireless telecommunication facilities located within 100 feet of an R District subject to the provisions of Chapter 159-; and

(22) Medical cannabis cultivation, processing and/or distribution facilities subject to the provisions of Chapter 158

§ 156.077 ML — LIMITED INDUSTRIAL DISTRICTS.

(D) *Conditional uses.*

(1) The following conditional uses shall be permitted upon the granting of a use permit in accord with the provisions of §§ 155.280 through 155.299 of this title:

(g) Gymnastics schools and health clubs; ~~and~~

(h) Wireless telecommunication facilities located within 100 feet of an R District subject to the provisions of Chapter 159; and

(i) Medical cannabis cultivation, processing and/or distribution facilities subject to the provisions of Chapter 158.

§ 156.078 MG — GENERAL INDUSTRIAL DISTRICTS.

(D) *Conditional uses.* The following conditional uses shall be permitted upon the granting of a use permit in accord with the provisions of §§ 155.280 through 155.299 of this title:

(44) Accessory structures and uses located on the same site as a conditional use; ~~and~~

(45) Wireless telecommunication facilities located within 100 feet of an R District subject to the provisions of Chapter 159; and

(46) Medical cannabis cultivation, processing and/or distribution facilities subject to the provisions of Chapter 158.

Section 2.

This ordinance becomes effective thirty (30) days after the date of its enactment.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Eureka in the County of Humboldt, State of California, on the _____ day of May, 2011 by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

Lance Madsen, Mayor Pro Tem

THE ABOVE ORDINANCE WAS SUBMITTED TO THE MAYOR on the _____ day of May, 2011, and hereby approved.

Frank Jäger, Mayor

Approved as to Administration:

Approved as to form:

David. W. Tyson, City Manager

William Bragg, Interim City Attorney

THE ABOVE ORDINANCE WAS ATTESTED BY THE CITY CLERK OF THE CITY OF EUREKA on the _____ day of May, 2011

Pamela J. Powell, City Clerk

MINUTES OF
EUREKA CITY COUNCIL
EUREKA REDEVELOPMENT AGENCY

March 1, 2011

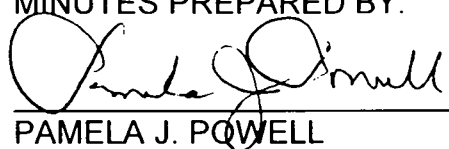
The City Council/Redevelopment Agency of the City of Eureka met in REGULAR Session on the above date, 5:00 P.M. Closed Session, 6:00 P.M. Open Session, at the Eureka City Hall, Council Chambers, 531 "K" Street, Eureka.

PRESIDING: MAYOR JÄGER

PRESENT: BRADY, ATKINS, NEWMAN, CIARABELLINI, MADSEN

ABSENT: NONE

MINUTES PREPARED BY:



PAMELA J. POWELL
City Clerk

COUNCIL APPROVAL ACKNOWLEDGED:

FRANK JÄGER
Mayor

CITY COUNCIL/REDEVELOPMENT AGENCY, CITY OF EUREKA
COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

MINUTE ORDER

Certified copy of portion of proceedings. Meeting of March 1, 2011.

SUBJECT: Public comment prior to closed session

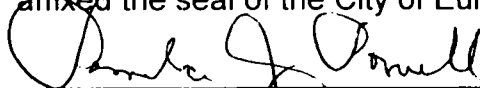
ACTION:

No one expressed an interest in addressing the Council at this time.

STATE OF CALIFORNIA)
County of Humboldt) ss.
City of Eureka)

I, PAMELA J. POWELL, City Clerk of the City of Eureka, do hereby certify the foregoing to be a true and correct copy of the original made in the above entitled matter by said City Council/Agency as the same now appears of record in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and
affixed the seal of the City of Eureka on April 4, 2011.



PAMELA J. POWELL
CITY CLERK

Originating Dept.

Agenda Item A

CITY COUNCIL/REDEVELOPMENT AGENCY, CITY OF EUREKA
COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

MINUTE ORDER

Certified copy of portion of proceedings. Meeting of March 1, 2011.

SUBJECT: Closed session

ACTION:

Council met in closed session to discuss the following matters:

Conference with labor negotiators

Agency designated representatives: Gary Bird for City of Eureka

Employee organization: Eureka Firefighters' Local #652 (EFL) and Eureka Fire Officers Local (EFOL).

Conference with real property negotiators - Property: APN 001-054-45 and 001-054-13

Agency negotiator: David W. Tyson for the City of Eureka

Negotiating Parties: Eureka Waterfront Partners

Under negotiation: price, terms, and conditions

Conference with labor negotiators

Agency designated representatives: David Tyson for City of Eureka

Employee organization: Unrepresented management, mid-management, and confidential employees.

Conference with real property negotiators

Property: Coastal Dependent Industrial property located on the water side of Waterfront Drive, westerly of the Eureka Small Boat Basin; upland portion of APN 003-062-021.

Agency negotiator: David Tyson for the Eureka Redevelopment Agency

Negotiating parties: David Schneider

Under negotiation: price, terms, and conditions.

Upon reconvening to Open Session, it was announced that there were no final actions to report.

Agenda Item Closed Session

MINUTE ORDER, March 1, 2011

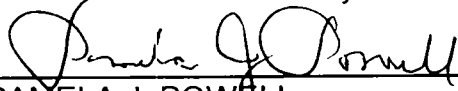
ITEM: Closed Session

PAGE: 2

STATE OF CALIFORNIA)
County of Humboldt) ss.
City of Eureka)

I, PAMELA J. POWELL, City Clerk of the City of Eureka, do hereby certify the foregoing to be a true and correct copy of the original made in the above entitled matter by said City Council/Agency as the same now appears of record in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the City of Eureka on April 4, 2011.



PAMELA J. POWELL
CITY CLERK

Originating Dept.

Agenda Item Closed Session

CITY COUNCIL/REDEVELOPMENT AGENCY, CITY OF EUREKA
COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

MINUTE ORDER

Certified copy of portion of proceedings. Meeting of March 1, 2011.

SUBJECT: Mayor's announcements

ACTION:

Mayor Jäger presented a proclamation for Arbor Day.
The Eureka Heritage Society presented an Award.
Mayor Jäger requested that a "facility fee waiver" be put on the next agenda for the League of Women Voter's luncheon to be held at the Adorni Center.

STATE OF CALIFORNIA)
County of Humboldt) ss.
City of Eureka)

I, PAMELA J. POWELL, City Clerk of the City of Eureka, do hereby certify the foregoing to be a true and correct copy of the original made in the above entitled matter by said City Council/Agency as the same now appears of record in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and
affixed the seal of the City of Eureka on April 4, 2011.



PAMELA J. POWELL
CITY CLERK

Originating Dept.

Agenda Item M/A

CITY COUNCIL/REDEVELOPMENT AGENCY, CITY OF EUREKA
COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

MINUTE ORDER

Certified copy of portion of proceedings. Meeting of March 1, 2011.

SUBJECT: Council reports / City-related travel report

ACTION:

Councilmember Atkins asked for clarification on Professional Service Contracts and Council approval.

Councilmember Ciarabellini provided a report regarding the Grant Elementary Walkability Assessment meeting that she attended on Friday, February 18, 2011.

STATE OF CALIFORNIA)
County of Humboldt) ss.
City of Eureka)

I, PAMELA J. POWELL, City Clerk of the City of Eureka, do hereby certify the foregoing to be a true and correct copy of the original made in the above entitled matter by said City Council/Agency as the same now appears of record in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the City of Eureka on April 4, 2011.



PAMELA J. POWELL
CITY CLERK

Originating Dept.

Agenda Item C/R

CITY COUNCIL/REDEVELOPMENT AGENCY, CITY OF EUREKA
COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

MINUTE ORDER

Certified copy of portion of proceedings. Meeting of March 1, 2011.

SUBJECT: Public comment period

ACTION:

The following individuals addressed the council at this time:

Nick Bravo, Eureka

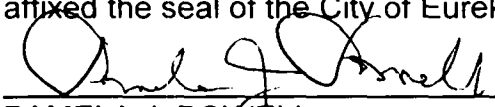
Michael Divado asked what the next step was for his company as he was not selected by the Medical Cannabis Committee to move forward.

Dennis Scott, Eureka gave an update on the POP program and other Eureka Police Department statistics.

STATE OF CALIFORNIA)
County of Humboldt) ss.
City of Eureka)

I, PAMELA J. POWELL, City Clerk of the City of Eureka, do hereby certify the foregoing to be a true and correct copy of the original made in the above entitled matter by said City Council/Agency as the same now appears of record in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and
affixed the seal of the City of Eureka on April 4, 2011.



PAMELA J. POWELL
CITY CLERK

Originating Dept.

Agenda Item 1

CITY COUNCIL/REDEVELOPMENT AGENCY, CITY OF EUREKA
COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

MINUTE ORDER

Certified copy of portion of proceedings. Meeting of March 1, 2011.

SUBJECT: Council meeting minutes.

ACTION:

Council approved the regular Council/Agency meeting minutes of January 18, 2011 and special Council/Agency meeting minutes of January 7, 2011 as submitted.

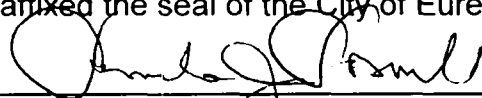
Adopted on motion by Councilmember Ciarabellini, seconded by Councilmember Madsen , and the following vote:

AYES: BRADY, ATKINS, NEWMAN, CIARABELLINI, MADSEN
NOES: NONE
ABSENT: NONE
ABSTAIN: NONE

STATE OF CALIFORNIA)
County of Humboldt) ss.
City of Eureka)

I, PAMELA J. POWELL, City Clerk of the City of Eureka, do hereby certify the foregoing to be a true and correct copy of the original made in the above entitled matter by said City Council/Agency as the same now appears of record in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the City of Eureka on April 4, 2011.



PAMELA J. POWELL
CITY CLERK

Originating Dept. City Clerk

Agenda Item 2

CITY COUNCIL/REDEVELOPMENT AGENCY, CITY OF EUREKA
COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

CITY COUNCIL/REDEVELOPMENT AGENCY, CITY OF EUREKA
COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

MINUTE ORDER

Certified copy of portion of proceedings. Meeting of March 1, 2011.

SUBJECT: Samoa Peninsula Fire District Agreement

ACTION:

Council authorized the City manager to enter into an agreement with Samoa Peninsula Fire District, Humboldt Fire District #1, and Arcata Fire Protection District to provide emergency response to the Samoa Peninsula Fire District.

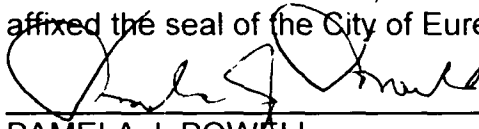
Adopted on motion by Councilmember Ciarabellini, seconded by Councilmember Madsen , and the following vote:

AYES: BRADY, ATKINS, NEWMAN, CIARABELLINI, MADSEN
NOES: NONE
ABSENT: NONE
ABSTAIN: NONE

STATE OF CALIFORNIA)
County of Humboldt) ss.
City of Eureka)

I, PAMELA J. POWELL, City Clerk of the City of Eureka, do hereby certify the foregoing to be a true and correct copy of the original made in the above entitled matter by said City Council/Agency as the same now appears of record in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and
affixed the seal of the City of Eureka on April 4, 2011.



PAMELA J. POWELL
CITY CLERK

Originating Dept. Fire

Agenda Item 3

CITY COUNCIL/REDEVELOPMENT AGENCY, CITY OF EUREKA
COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

MINUTE ORDER

Certified copy of portion of proceedings. Meeting of March 1, 2011.

SUBJECT: Correspondence Policy

ACTION:

City Clerk, Pam Powell provided a report. No one from the public addressed the Council regarding this matter.

Council adopted Policy No. 1.12 "Council Correspondence Policy" as a policy of the City Council

Adopted on motion by Councilmember Madsen, seconded by Councilmember Brady, and the following vote:

AYES: BRADY, ATKINS, NEWMAN, CIARABELLINI, MADSEN
NOES: NONE
ABSENT: NONE
ABSTAIN: NONE

STATE OF CALIFORNIA)
County of Humboldt) ss.
City of Eureka)

I, PAMELA J. POWELL, City Clerk of the City of Eureka, do hereby certify the foregoing to be a true and correct copy of the original made in the above entitled matter by said City Council/Agency as the same now appears of record in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and
affixed the seal of the City of Eureka on April 4, 2011.



PAMELA J. POWELL
CITY CLERK

Originating Dept. City Clerk

Agenda Item 4

CITY COUNCIL/REDEVELOPMENT AGENCY, CITY OF EUREKA
COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

MINUTE ORDER

Certified copy of portion of proceedings. Meeting of March 1, 2011.

SUBJECT: Redevelopment Agency – Resolution Amending the Agreement for the Construction of Public Improvements

ACTION:

Council adopted the Joint Resolution No. 2011-14 and 11-4 of the City Council and Redevelopment Agency approving the thirty-fourth amendment for the Construction of Public Improvements within the Century III Phase I, Century III Phase II, and the Eureka Tomorrow Redevelopment Projects.

Adopted on motion by Councilmember Ciarabellini, seconded by Councilmember Madsen, and the following vote:

AYES: BRADY, ATKINS, NEWMAN, CIARABELLINI, MADSEN
NOES: NONE
ABSENT: NONE
ABSTAIN: NONE

STATE OF CALIFORNIA)
County of Humboldt) ss.
City of Eureka)

I, PAMELA J. POWELL, City Clerk of the City of Eureka, do hereby certify the foregoing to be a true and correct copy of the original made in the above entitled matter by said City Council/Agency as the same now appears of record in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the City of Eureka on April 4, 2011.



PAMELA J. POWELL
CITY CLERK

Originating Dept. Redevelopment

Agenda Item 5

CITY COUNCIL/REDEVELOPMENT AGENCY, CITY OF EUREKA
COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

MINUTE ORDER

Certified copy of portion of proceedings. Meeting of March 1, 2011.

SUBJECT: Bid Protest Procedure Policy

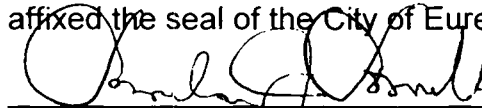
ACTION:

Council pulled this item from the agenda and did not discuss.

STATE OF CALIFORNIA)
County of Humboldt) ss.
City of Eureka)

I, PAMELA J. POWELL, City Clerk of the City of Eureka, do hereby certify the foregoing to be a true and correct copy of the original made in the above entitled matter by said City Council/Agency as the same now appears of record in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and
affixed the seal of the City of Eureka on April 4, 2011.



PAMELA J. POWELL
CITY CLERK

Originating Dept.

Engineering

Agenda Item 6

CITY COUNCIL/REDEVELOPMENT AGENCY, CITY OF EUREKA
COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

MINUTE ORDER

Certified copy of portion of proceedings. Meeting of March 1, 2011.

SUBJECT: Redevelopment Agency – Joint Resolution in Opposition to the
Administration's Proposal to Abolish Redevelopment Agencies in California

ACTION:

Redevelopment Director, Cindy Trobitz Thomas provided a report. No one from the public addressed the council regarding this subject matter.

Council adopted Joint Resolution No. 2011-13 and 11-3 of the City Council and the Redevelopment Agency opposing the administration's Proposal to Abolish Redevelopment Agencies in California.

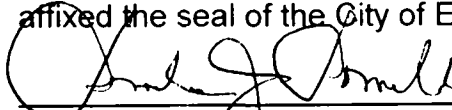
Adopted on motion by Councilmember Madsen, seconded by Councilmember Atkins, and the following vote:

AYES: BRADY, ATKINS, NEWMAN, CIARABELLINI, MADSEN
NOES: NONE
ABSENT: NONE
ABSTAIN: NONE

STATE OF CALIFORNIA)
County of Humboldt) ss.
City of Eureka)

I, PAMELA J. POWELL, City Clerk of the City of Eureka, do hereby certify the foregoing to be a true and correct copy of the original made in the above entitled matter by said City Council/Agency as the same now appears of record in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and
affixed the seal of the City of Eureka on April 4, 2011.



PAMELA J. POWELL
CITY CLERK

CITY COUNCIL/REDEVELOPMENT AGENCY, CITY OF EUREKA
COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

MINUTE ORDER

Certified copy of portion of proceedings. Meeting of March 1, 2011.

SUBJECT: Redevelopment Agency -- Joint Resolution in Opposition to the
administration's Proposal to Abolish Enterprise Zones in California

ACTION:

Redevelopment Director, Cindy Trobitz Thomas provided a report. No one from the public
addressed the council regarding this subject matter.

Council adopted Joint Resolution No. 2011-12 and 11-2 of the City Council and
Redevelopment Agency opposing the Administration's Proposal to Abolish Enterprise
Zones in California.

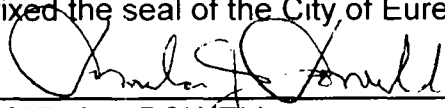
Adopted on motion by Councilmember Newman, seconded by Councilmember Atkins, and
the following vote:

AYES: BRADY, ATKINS, NEWMAN, CIARABELLINI, MADSEN
NOES: NONE
ABSENT: NONE
ABSTAIN: NONE

STATE OF CALIFORNIA)
County of Humboldt) ss.
City of Eureka)

I, PAMELA J. POWELL, City Clerk of the City of Eureka, do hereby certify the foregoing to
be a true and correct copy of the original made in the above entitled matter by said City
Council/Agency as the same now appears of record in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and
affixed the seal of the City of Eureka on April 4, 2011.



PAMELA J. POWELL
CITY CLERK

CITY COUNCIL/REDEVELOPMENT AGENCY, CITY OF EUREKA
COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

MINUTE ORDER

Certified copy of portion of proceedings. Meeting of March 1, 2011.

SUBJECT: Transient Occupancy Tax Lien

ACTION:

City Manager, David Tyson, provided a report. No one from the public addressed the council regarding this subject matter.

Council adopted, waived reading and read by title only Bill No. 834-C.S, Ordinance No. 766-C.S. of the City of Eureka Amending Chapter 35 of the Eureka Municipal Code to authorize the use of Lien Procedures for the Collection of Delinquent Transient Occupancy Taxes.

Adopted on motion by Councilmember Atkins, seconded by Councilmember Madsen, and the following vote:

AYES: BRADY, ATKINS, NEWMAN, CIARABELLINI, MADSEN
NOES: NONE
ABSENT: NONE
ABSTAIN: NONE

STATE OF CALIFORNIA)
County of Humboldt) ss.
City of Eureka)

I, PAMELA J. POWELL, City Clerk of the City of Eureka, do hereby certify the foregoing to be a true and correct copy of the original made in the above entitled matter by said City Council/Agency as the same now appears of record in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the City of Eureka on April 4, 2011.



PAMELA J. POWELL
CITY CLERK

Originating Dept. City Manager

Agenda Item 9

CITY COUNCIL/REDEVELOPMENT AGENCY, CITY OF EUREKA
COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

MINUTE ORDER

Certified copy of portion of proceedings. Meeting of March 1, 2011.

SUBJECT: Swim Possible Presentation.

ACTION:

Brian Nunn, Mike Pigg, Brendan McNulty, Praj White and Dennis Houghton provided a report. No one from the public addressed the council regarding this subject matter.

Council received the report from "Swim Possible" regarding their interest in the Redevelopment Agency owned Carson Mill property.

STATE OF CALIFORNIA)
County of Humboldt) ss.
City of Eureka)

I, PAMELA J. POWELL, City Clerk of the City of Eureka, do hereby certify the foregoing to be a true and correct copy of the original made in the above entitled matter by said City Council/Agency as the same now appears of record in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the City of Eureka on April 4, 2011.



PAMELA J. POWELL
CITY CLERK

Originating Dept. City Manager

Agenda Item 10

CITY COUNCIL/REDEVELOPMENT AGENCY, CITY OF EUREKA
COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

MINUTE ORDER

Certified copy of portion of proceedings. Meeting of March 1, 2011.

SUBJECT: Medical Cannabis Selection Committee Recommendations

ACTION: City Manager, David Tyson provided a report. The following individuals addressed the council regarding this subject matter:

Richard Lytle, Arcata
Nicholas Bravo, Eureka
Jeff Katz, Eureka
Chuck Edwards, Eureka

Council continued the item to the March 15, 2011 regular meeting to allow for Council to meet with the applicants and review applications. Applicants will also present their projects to the Council at the March 15, 2011 meeting.

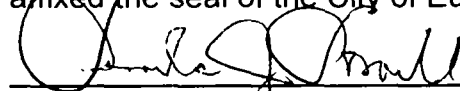
Adopted on motion by Councilmember Madsen, seconded by Councilmember Ciarabellini, and the following vote:

AYES: BRADY, ATKINS, NEWMAN, CIARABELLINI, MADSEN
NOES: NONE
ABSENT: NONE
ABSTAIN: NONE

STATE OF CALIFORNIA)
County of Humboldt) ss.
City of Eureka)

I, PAMELA J. POWELL, City Clerk of the City of Eureka, do hereby certify the foregoing to be a true and correct copy of the original made in the above entitled matter by said City Council/Agency as the same now appears of record in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and
affixed the seal of the City of Eureka on April 4, 2011.



PAMELA J. POWELL
CITY CLERK

Originating Dept. City Manager

Agenda Item 11

CITY COUNCIL/REDEVELOPMENT AGENCY, CITY OF EUREKA
COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

MINUTE ORDER

Certified copy of portion of proceedings. Meeting of March 1, 2011.

SUBJECT: Ridgewood Village Project

ACTION: Councilmember Madsen, City Manager, David Tyson and Senior Planner, Rob Wall provided a report. The following individuals addressed the council regarding this subject matter:

Nancy Davis, Eureka
Tina Christensen, Fortuna
Jim Yarnall, Eureka
Julie Williams, Eureka

Council authorized the Mayor to sign a letter to the Humboldt County Board of Supervisors regarding the City Council's concerns related to the Ridgewood Village project and draft Environmental Impact Report. Direction was also given to include language regarding the need for a "Standards of Coverage Study" to be done to assess the ability for fire protection.


Adopted on motion by Councilmember Ciarabellini, seconded by Councilmember Madsen , and the following vote:

AYES: BRADY, ATKINS, NEWMAN, CIARABELLINI, MADSEN
NOES: NONE
ABSENT: NONE
ABSTAIN: NONE

STATE OF CALIFORNIA)
County of Humboldt) ss.
City of Eureka)

I, PAMELA J. POWELL, City Clerk of the City of Eureka, do hereby certify the foregoing to be a true and correct copy of the original made in the above entitled matter by said City Council/Agency as the same now appears of record in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the City of Eureka on April 4, 2011.



PAMELA J. POWELL
CITY CLERK

Originating Dept. Council

Agenda Item 12

CITY COUNCIL/REDEVELOPMENT AGENCY, CITY OF EUREKA
COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

MINUTE ORDER

Certified copy of portion of proceedings. Meeting of March 1, 2011.

SUBJECT: County General Plan

ACTION:

Councilmember Madsen provided a report. The following individuals addressed the council regarding this subject matter:

Julie Williams, Eureka

Dave Warshalk, McKinleyville

Gary Harner, HELP

Bob Higgons, Association of Humboldt County Realtors

Debbie Provolt

Estell Fennel, Redway and Hum CPR

Jim Yarnall, Eureka

Martha Spencer, Senior Planner, County of Humboldt

Dan Airsman, Health Humboldt

Robert Morris, Blocksburg

Tina Christensen, Fortuna

Dan Toronto, Fieldbrook

Nancy Pritchard, Cutten

Peter Chiles

On motion by Councilmember Atkins, and without objection, the council elected to take a brief recess at 9:15 P.M. At 9:25 P.M. Council reconvened with all present.

Council authorized the Mayor to sign a letter to the Humboldt County Board of Supervisors expressing the City's concern about the County's General Plan Update process and requesting the General Plan Update be placed on hold to allow for the creation of Citizen Advisory Committees, which will assist in making the update process more inclusive.

Adopted on motion by Councilmember Madsen, seconded by Councilmember Newman, and the following vote:

AYES: BRADY, NEWMAN, CIARABELLINI, MADSEN

NOES: ATKINS

ABSENT: NONE

ABSTAIN: NONE

MINUTE ORDER, March 1, 2011

Page 2

Item 13

STATE OF CALIFORNIA)
County of Humboldt) ss.
City of Eureka)

I, PAMELA J. POWELL, City Clerk of the City of Eureka, do hereby certify the foregoing to be a true and correct copy of the original made in the above entitled matter by said City Council/Agency as the same now appears of record in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the City of Eureka on April 4, 2011.



PAMELA J. POWELL
CITY CLERK

Originating Dept. Council

Agenda Item 13

CITY COUNCIL/REDEVELOPMENT AGENCY, CITY OF EUREKA
COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

MINUTE ORDER

Certified copy of portion of proceedings. Meeting of March 1, 2011.

SUBJECT: City Manager/Executive Director's reports

ACTION:

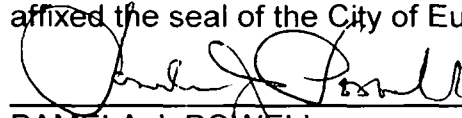
City Manager Tyson provided information regarding the following:

- Interim Fire Chief Bill Gillespie provided a report regarding the Fire Department's monthly activities.

STATE OF CALIFORNIA)
County of Humboldt) ss.
City of Eureka)

I, PAMELA J. POWELL, City Clerk of the City of Eureka, do hereby certify the foregoing to be a true and correct copy of the original made in the above entitled matter by said City Council/Agency as the same now appears of record in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and
affixed the seal of the City of Eureka on April 4, 2011.



PAMELA J. POWELL
CITY CLERK

Originating Dept. City Manager

CITY COUNCIL/REDEVELOPMENT AGENCY, CITY OF EUREKA
COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

MINUTE ORDER

Certified copy of portion of proceedings. Meeting of March 1, 2011.

SUBJECT: Adjournment

ACTION:

Without objection, the meeting was adjourned at 9:52 P.M.

STATE OF CALIFORNIA)
County of Humboldt) ss.
City of Eureka)

I, PAMELA J. POWELL, City Clerk of the City of Eureka, do hereby certify the foregoing to be a true and correct copy of the original made in the above entitled matter by said City Council/Agency as the same now appears of record in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and
affixed the seal of the City of Eureka on April 4, 2011.



PAMELA J. POWELL
CITY CLERK

MINUTES OF
EUREKA CITY COUNCIL
EUREKA REDEVELOPMENT AGENCY

March 9, 2011

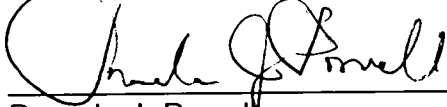
The City Council/Redevelopment Agency of the City of Eureka met in SPECIAL Session on the above date, 6:00 P.M. Open Session, at Eureka City Hall, Council Chambers, 531 "K" Street, Eureka.

PRESIDING: MAYOR JÄGER,

PRESENT: BRADY, ATKINS, NEWMAN, CIARABELLINI, MADSEN


ABSENT:

MINUTES PREPARED BY:



Pamela J. Powell
City Clerk

COUNCIL APPROVAL ACKNOWLEDGED:


Frank J. Jäger
Mayor

CITY COUNCIL/REDEVELOPMENT AGENCY, CITY OF EUREKA
COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

MINUTE ORDER

Certified copy of portion of proceedings. Meeting of March 9, 2011

SUBJECT: Conveyance of Agency Owned Property to the City of Eureka for its Intended
Redevelopment Purposes

ACTION:

Redevelopment Director, Cindy Trobitz Thomas provided a report. The following
individuals addressed the Council regarding this matter:

John Ash, Eureka

Council adopted City Council and Agency Resolutions No. 2011-15 and 11-5 authorizing
execution of a Property Conveyance Agreement for Conveyance of Agency owned real
property located within the Eureka Redevelopment Project Areas to the City of Eureka.

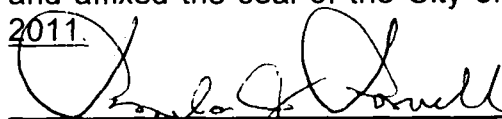
On a motion by Councilmember Madsen, seconded by Councilmember Brady and the
following vote:

AYES: BRADY, ATKINS, CIARABELLINI, MADSEN, NEWMAN
NOES: NONE
ABSENT: NONE
ABSTAIN: NONE

STATE OF CALIFORNIA)
County of Humboldt) ss.
City of Eureka)

I, PAMELA J. POWELL, City Clerk of the City of Eureka, do hereby certify the foregoing to
be a true and correct copy of the original made in the above entitled matter by said City
Council/Agency as the same now appears of record in my office.

IN WITNESS WHEREOF, I have hereunto set my hand
and affixed the seal of the City of Eureka on April 4,
2011.



PAMELA J. POWELL
CITY CLERK

CITY COUNCIL/REDEVELOPMENT AGENCY, CITY OF EUREKA
COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

MINUTE ORDER

Certified copy of portion of proceedings. Meeting of March 9, 2011

SUBJECT: Cooperation Agreement between Eureka Redevelopment Agency and the City of Eureka for Services and Funding Related to the Eureka Main Street Program

ACTION:

Redevelopment Director, Cindy Trobitz Thomas provided a report. The following individuals addressed the Council regarding this matter:

Charlotte McDonald, Executive Director, Eureka Main Street

Council adopted City Council and Agency Resolutions 2011-15 and 11-5 authorizing the execution of a Cooperation Agreement for providing services and funding related to the Eureka Main Street Program.

Adopted on a motion by Councilmember Brady, seconded by Councilmember Ciarabellini and the following vote:

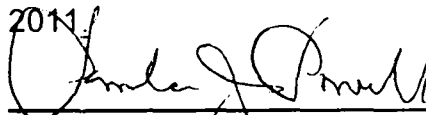
AYES: BRADY, ATKINS, CIARABELLINI, MADSEN, NEWAN
NOES: NONE
ABSENT: NONE
ABSTAIN: NONE

STATE OF CALIFORNIA)
County of Humboldt) ss.
City of Eureka)

I, PAMELA J. POWELL, City Clerk of the City of Eureka, do hereby certify the foregoing to be a true and correct copy of the original made in the above entitled matter by said City Council/Agency as the same now appears of record in my office.

IN WITNESS WHEREOF, I have hereunto set my hand
and affixed the seal of the City of Eureka on April 4,

2011



PAMELA J. POWELL
CITY CLERK

CITY COUNCIL/REDEVELOPMENT AGENCY, CITY OF EUREKA
COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

MINUTE ORDER

Certified copy of portion of proceedings. Meeting of March 9, 2011

SUBJECT: Closed Session

ACTION:

Council met in closed session to discuss the following matters:

Conference with labor negotiators

Agency designated representative: Gary Bird for City of Eureka

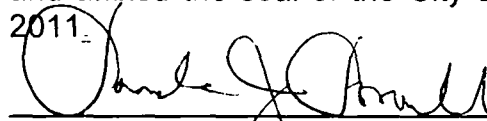
Employee organizations: Eureka Firefighters' Local #652 (EFL) and Eureka Fire Officers Local (EFOL)

There were no final actions to report.

STATE OF CALIFORNIA)
County of Humboldt) ss.
City of Eureka)

I, PAMELA J. POWELL, City Clerk of the City of Eureka, do hereby certify the foregoing to be a true and correct copy of the original made in the above entitled matter by said City Council/Agency as the same now appears of record in my office.

IN WITNESS WHEREOF, I have hereunto set my hand
and affixed the seal of the City of Eureka on April 4,
2011.



PAMELA J. POWELL
CITY CLERK

Originating Dept.

Agenda Item

CITY COUNCIL/REDEVELOPMENT AGENCY, CITY OF EUREKA
COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

MINUTE ORDER

Certified copy of portion of proceedings. Meeting of March 9, 2011.

SUBJECT: ADJOURNMENT

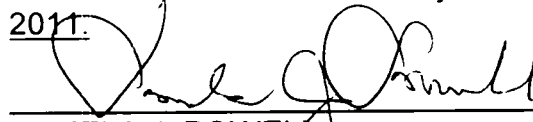
ACTION:

Without objection, the meeting was adjourned at 3:18 P.M. to Closed Session

STATE OF CALIFORNIA)
County of Humboldt) ss.
City of Eureka)

I, PAMELA J. POWELL, Interim City Clerk of the City of Eureka, do hereby certify the foregoing to be a true and correct copy of the original made in the above entitled matter by said City Council/Agency as the same now appears of record in my office.

IN WITNESS WHEREOF, I have hereunto set my hand
and affixed the seal of the City of Eureka on April 4,
2011.



PAMELA J. POWELL
CITY CLERK

Originating Dept.

Agenda Item

MINUTES OF
EUREKA CITY COUNCIL
EUREKA REDEVELOPMENT AGENCY

March 15, 2011

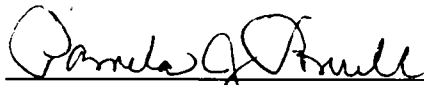
The City Council/Redevelopment Agency of the City of Eureka met in REGULAR Session on the above date, 5:00 P.M. Closed Session, 6:00 P.M. Open Session, at the Eureka City Hall, Council Chambers, 531 "K" Street, Eureka.

PRESIDING: MAYOR JÄGER

PRESENT: BRADY, ATKINS, NEWMAN, CIARABELLINI, MADSEN


ABSENT: NONE

MINUTES PREPARED BY:



PAMELA J. POWELL
City Clerk

COUNCIL APPROVAL ACKNOWLEDGED:



FRANK J. JÄGER
Mayor

CITY COUNCIL/REDEVELOPMENT AGENCY, CITY OF EUREKA
COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

MINUTE ORDER

Certified copy of portion of proceedings. Meeting of March 15, 2011.

SUBJECT: Public comment prior to closed session

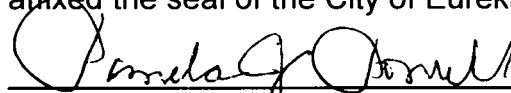
ACTION:

No one expressed an interest in addressing the Council at this time.

STATE OF CALIFORNIA)
County of Humboldt) ss.
City of Eureka)

I, PAMELA J. POWELL, City Clerk of the City of Eureka, do hereby certify the foregoing to be a true and correct copy of the original made in the above entitled matter by said City Council/Agency as the same now appears of record in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and
affixed the seal of the City of Eureka on March 18, 2011.



PAMELA J. POWELL
CITY CLERK

Originating Dept.

Agenda Item A

CITY COUNCIL/REDEVELOPMENT AGENCY, CITY OF EUREKA
COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

MINUTE ORDER

Certified copy of portion of proceedings. Meeting of March 15, 2011.

SUBJECT: Closed session

ACTION:

Council met in closed session to discuss the following matters:

Conference with legal counsel-existing litigation

Name of case: KFD Enterprises, Inc., dba Norman's Dry Cleaner v. City of Eureka (N.D. Cal. CV084571).

Conference with real property negotiators

Property: Coastal Dependent Industrial property located on the water side of Waterfront Drive, westerly of the Eureka Small Boat Basin; upland portion of APN 003-062-021.

Agency negotiator: David Tyson for the Eureka Redevelopment Agency

Negotiating parties: David Schneider

Under negotiation: price, terms, and conditions.

Conference with labor negotiators

Agency designated representatives: David Tyson for City of Eureka

Employee organization: Unrepresented management, mid-management, and confidential employees.

Conference with real property negotiators

Property: APN 002-241-011 (known as the Halvorsen Site)

Agency negotiator: David Tyson for the City of Eureka

Negotiating parties: Mission Swimpossible, Inc.

Under Negotiation: price terms, and conditions

Upon reconvening to Open Session, it was announced that there were no final actions to report.

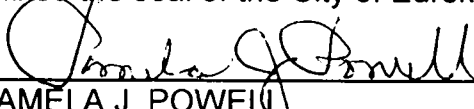
Agenda Item Closed Session

MINUTE ORDER, March 15, 2011
ITEM: Closed Session
PAGE: 2

STATE OF CALIFORNIA)
County of Humboldt) ss.
City of Eureka)

I, PAMELA J. POWELL, City Clerk of the City of Eureka, do hereby certify the foregoing to be a true and correct copy of the original made in the above entitled matter by said City Council/Agency as the same now appears of record in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the City of Eureka on March 18, 2011.



PAMELA J. POWELL
CITY CLERK

Originating Dept.

Agenda Item Closed Session

CITY COUNCIL/REDEVELOPMENT AGENCY, CITY OF EUREKA
COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

MINUTE ORDER

Certified copy of portion of proceedings. Meeting of March 15, 2011.

SUBJECT: Mayor's announcements

ACTION:

Mayor Jager announced that Items 1, 14 and 19 have been pulled from the agenda and will not be discussed.

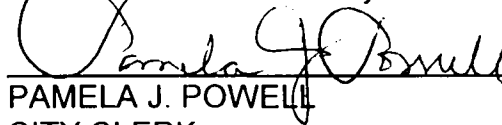
Mayor Jager presented a proclamation for Boys and Girls Club, the Tsunami Warning Communications Test and Welcome Home Vietnam Veterans Day, March 20, 2011.

Mayor Jager invited Marilyn Grovin to the podium to address the Council regarding the possibility of displaced families from Japan being placed in Eureka. Mayor Jager also announced that he had been in contact with the Mayor's office of Kamisu, Japan and that Eureka's sister City had sustained minor damage in the Japan earthquake and tsunami.

STATE OF CALIFORNIA)
County of Humboldt) ss.
City of Eureka)

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PAMELA J. POWELL
CITY CLERK

Originating Dept.

Agenda Item M/A

CITY COUNCIL/REDEVELOPMENT AGENCY, CITY OF EUREKA
COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

MINUTE ORDER

Certified copy of portion of proceedings. Meeting of March 15, 2011.

SUBJECT: Council reports / City-related travel report

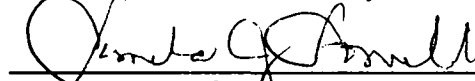
ACTION:

Councilmember Ciarabellini thanked the City Manager and staff for their response to the Tsunami Warning in Eureka.

STATE OF CALIFORNIA)
County of Humboldt) ss.
City of Eureka)

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PAMELA J. POWELL
CITY CLERK

Originating Dept.

Agenda Item C/R

CITY COUNCIL/REDEVELOPMENT AGENCY, CITY OF EUREKA
COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

MINUTE ORDER

Certified copy of portion of proceedings. Meeting of March 15, 2011.

SUBJECT: Board/Commission reports

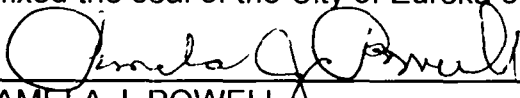
ACTION:

Keep Eureka Beautiful presented an award to Mike Cox for picking up trash along Eureka City Streets. Mr. Cox has picked up over 2.5 tons of trash.

STATE OF CALIFORNIA)
County of Humboldt) ss.
City of Eureka)

I, PAMELA J. POWELL, City Clerk of the City of Eureka, do hereby certify the foregoing to be a true and correct copy of the original made in the above entitled matter by said City Council/Agency as the same now appears of record in my office.

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PAMELA J. POWELL
CITY CLERK

Originating Dept.

Agenda Item B/C

CITY COUNCIL/REDEVELOPMENT AGENCY, CITY OF EUREKA
COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

MINUTE ORDER

Certified copy of portion of proceedings. Meeting of March 15, 2011.

SUBJECT: Public Hearing – Schneider Cargo Storage Area Coastal Development Permit.

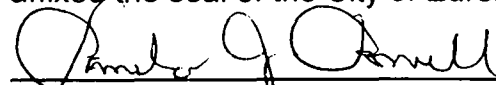
ACTION:

This item was pulled from the agenda and not discussed.

STATE OF CALIFORNIA)
County of Humboldt) ss.
City of Eureka)

I, PAMELA J. POWELL, City Clerk of the City of Eureka, do hereby certify the foregoing to be a true and correct copy of the original made in the above entitled matter by said City Council/Agency as the same now appears of record in my office.

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PAMELA J. POWELL
CITY CLERK

Originating Dept. Community Development

Agenda Item 1

CITY COUNCIL/REDEVELOPMENT AGENCY, CITY OF EUREKA
COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

MINUTE ORDER

Certified copy of portion of proceedings. Meeting of March 15, 2011.

SUBJECT: Public Hearing – Application for Funding from the 2010/2011 Economic Enterprise Fund Allocation of the State Community Development Block Grant (CDBG)

ACTION:

Redevelopment Director, Cindy Trobitz Thomas provided a report.

The public hearing was opened at 6:29 P.M. No one from the public addressed the council regarding this subject matter. The public hearing was closed at 6:29 P.M.

Council adopted City Council Resolution No. 2011-19 approving an application for funding in the amount of \$500,000 from the Economic Enterprise Fund Allocation of the 2010/2011 State CDBG Program.

Adopted on motion by Councilmember Atkins, seconded by Councilmember Ciarabellini, and the following vote:

AYES: BRADY, ATKINS, NEWMAN, JÄGER, MADSEN
NOES: NONE
ABSENT: NONE
ABSTAIN: NONE

STATE OF CALIFORNIA)
County of Humboldt) ss.
City of Eureka)

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PAMELA J. POWELL
CITY CLERK

CITY COUNCIL/REDEVELOPMENT AGENCY, CITY OF EUREKA
COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

MINUTE ORDER

Certified copy of portion of proceedings. Meeting of March 15, 2011.

SUBJECT: Public Hearing – Open Door Community Health Center Coastal Development Permit, Tydd Street (APN No. 002-191-027, 028, 031)

ACTION:

Community Development Director, Sidnie Olson provided a report along with Laco and Associates.

The public hearing was opened at 6:50 P.M. The following individuals addressed the council regarding this subject matter:

Steve Deagotti, Eureka
Nick Bravo, Eureka
Tom Stewart, Eureka

The public hearing was closed at 6:59 P.M.

Council adopted the Mitigated Negative Declaration, the Mitigation Monitoring and Report Program, and the Findings of Fact as represented below:

FINDINGS OF FACT

The decision of the City Council to approve the Coastal Development Permit was made after careful, reasoned and equitable consideration of the evidence in the record, including, but not be limited to: written and oral testimony submitted at the public hearing; the staff report; site investigation(s); agency comments; project file; and, the evidence submitted with the permit application. The findings of fact listed below “bridge the analytical gap” between the raw evidence in the record and the City Council’s decision.

1. The decision to approve or conditionally approve the subject application is a discretionary action subject to environmental review in accordance with the California Environmental Quality Act (CEQA). A Mitigated Negative Declaration has been prepared for the project. The Initial Study and Mitigated Negative Declaration were circulated through the State Clearinghouse in accordance with CEQA for review and comment for a period of 30 days ending on March 8, 2011 (SCH# 2011022028). The conclusion of the Initial Study is that the project with the included recommended mitigation measures will not result in an adverse environmental impact.

MINUTE ORDER, March 15, 2011

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2. Pursuant to CEQA, the City Council makes the following findings and determinations:
 - a. The proposed project will not have a significant effect on the environment.
 - b. A Mitigated Negative Declaration was prepared for this project pursuant to the provisions of CEQA.
 - c. The decision to adopt the Mitigated Negative Declaration was based on the whole record (including the initial study and any comments received).
 - d. The Mitigated Negative Declaration reflects the City of Eureka's independent judgment and analysis.
 - e. Mitigation measures were made a condition of project approval.
 - f. A Statement of Overriding Considerations was not adopted for this project.
 - g. Findings were not made pursuant to the provisions of CEQA (CCR §15091)
 - h. A program for reporting on or monitoring the changes which are either required in the project or made a condition of approval to mitigate or avoid significant environmental effects was adopted.
 - i. The project site is within two nautical miles of a public airport or public use airport, however, the project will not result in a safety hazard or noise problem for persons using the airport or for persons residing or working in the project area.
3. The Open Door Community Health Centers (ODCHC) is a 501(c)(3) private not-for-profit corporation incorporated in 1971. The proposed project would be a new two-story approximately 27,000 square foot health and wellness Centers which is also a charitable institution. "Charitable Institution" is defined in the Coastal Zoning Regulations, in part, as "A non-profit institution devoted to the housing, training, or care of children, or of aged, indigent, handicapped, or underprivileged persons..." The new ODCHC will not provide housing, but it will provide training and care for indigent, handicapped, or underprivileged persons and, therefore, is a "Charitable Institution."
4. The subject property is split-zoned with the eastern portion of the property zoned and planned Service Commercial and the western portion zoned and planned Multi-Family Residential. Both the Service Commercial and the Multi-Family Residential zone districts conditionally permit "Charitable Institutions," therefore a Conditional Use Permit is required for the new ODCHC facility. The Conditional Use Permit was granted by the Planning Commission on March 14, 2011.

MINUTE ORDER, March 15, 2011

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5. The proposed ODCHC will be developed on two adjoining properties. Based on preliminary site plans, the proposed building will straddle the property line thus requiring either a lot line adjustment or merger of property to remove the property line out from under the building - this is a condition of approval.
6. The subject property has split General Plan designations, with roughly the east half planned General Service Commercial (GSC) and roughly the west half planned High Density Residential (HDR). As discussed in the background section, the project is initially being permitted as a "Charitable Institution" which is a conditionally permitted use in both districts. Because the proposed ODCHC is consistent with uses allowed in both districts, the ODCHC will achieve the arrangement of land uses and protect the stability of existing land uses in conformance with the adopted general plan.
7. The ODCHC provides a vital and critical service for the entire community; its location places the facility in proximity to potential clients and patients, particularly from the Salvation Army Silvercrest Senior Housing facility located across Tydd Street. The improvements to the property and to the city infrastructure will enhance property values.
8. The project will not have any increase in population density. The subject property is approximately 6.6 acres in size with only about 1.82 acres to be used for the new ODCHC facility which will include an approximately 27,000 square foot two-story building and including landscaping and parking. The ODCHC is being designed to complement its surroundings including preserving open space. The project will be subject to Design Review including Architectural Review and Site Plan Review. Architectural Review is concerned with the basic aesthetics of the project, and Site Plan Review looks at the project's basic compliance with the development standards of the Eureka Municipal Code including number and location of parking, amount and location of landscaping, building height and location, etc. Through Design Review the project will be evaluated for aesthetics and appearance to assure that the new ODCHC will enhance and safeguard the appearance of the city.
9. The proposed ODCHC would be a community facility. The location of the ODCHC places the facility adjacent to residential uses and commercial uses and in proximity to potential clients and patients, particularly from the Salvation Army Silvercrest Senior Housing facility located across Tydd Street.

MINUTE ORDER, March 15, 2011

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10. ODCHC prepared a draft traffic study and addendums to identify existing traffic and circulation conditions and to recommend appropriate and feasible mitigation measures to reduce any potential impacts resulting from the project on traffic and circulation. The traffic study also discusses the parking needs of the new ODCHC and the project site plans shows the location of the parking and loading areas. The City Engineering Department has reviewed the traffic study and concurs with the conclusions and recommended mitigation measures. Compliance with the recommendations of the traffic study, as amended and approved by the City, has been included as a condition of approval.
11. The project will be subject to Design Review including Architectural Review and Site Plan Review. Architectural Review is concerned with the basic aesthetics of the project, and Site Plan Review looks at the project's basic compliance with the development standards of the Eureka Municipal Code. A preliminary review of the ODCHC project confirms that the location, height and size of the proposed building is in compliance with the development standards, and that the parking, loading and landscaping are also in compliance with the development standards.
12. The project site contains environmentally sensitive habitat areas (ESHA) in the lower reaches of the property. The development area will be limited to the upper bench area and a 100' buffer between the development and the ESHA. Will be maintained The project will also include LID measures to further reduce impacts to the ESA thereby assuring that the ecological balance of the coastal zone is maintained.
13. The project Applicant has been working with City staff on public access concepts that would extend the City's waterfront trail through the property. The location and design of a future trail is only in the concept phase at this point, but the discussions have focused on the trail being incorporated with the access driveway along the north property line, or through the ESHA below the development. The Applicant has shown on the site plan public access along the sidewalks of the project to allow the City the opportunity to make the connection from Tydd Street to the existing trail behind Target.
14. The subject property is located between the first public road and the sea, however, the property does not have any shoreline. Therefore, a vertical access easement to the mean high tide line is not possible.
15. The subject property is located between the first public road and the sea, however, the property does not have any shoreline. Therefore, a lateral access easement along the shoreline is not possible.

MINUTE ORDER, March 15, 2011

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16. The project will not impact the biological productivity or the quality of coastal waters, streams, etc. The project will include LID techniques to reduce surface runoff and maintain surface water quality.
17. There are NR designated property within 250 feet of the project site. The draft Mitigated Negative Declaration and Initial Study prepared for the project analyzes the project potential impact on coastal resources and concludes that the project will not adversely impact these areas.
18. Although the project site is near the Eureka Slough, it will have no impact on shoreline erosion.
19. A geologic and soils investigation was completed for the project. The recommendations of the report have been made mitigation measures and included as conditions to project approval.

CONDITIONS OF APPROVAL

The development approved under the Coastal Development is conditioned upon the following. Any violation of the Conditions of Approval or failure to implement the conditions may subject the Coastal Development to revocation:

1. The Applicant shall complete all of the conditions of approval, listed below, adopted by the Planning Commission on March 14, 2011, for approval of the Conditional Use Permit (Case No. C-10-0004).

Conditions of Approval adopted by the Planning Commission:

1. The Applicant shall comply with the adopted Mitigation Monitoring and Reporting Program (MMRP).
2. The Applicant shall comply with the recommendations and permit requirements of the California Regional Water Quality Control Board, North Coast Region, as outlined in their letter to Sidnie L. Olson dated February 7, 2011. This condition shall be completed to the satisfaction of the RWQCB.
3. If the project requires relocation of PG&E facilities, such relocation shall be in compliance with PG&E policy and regulations and shall be at the sole expense of the Applicant. This condition shall be completed to the satisfaction of PG&E.
4. The Applicant shall enter into reciprocal access easements with the City of Eureka, and shall dedicate a public utility easement to the City of Eureka, over a 30' wide strip along the entire northern property line. This condition shall be completed to the satisfaction of the City Public Works Department

MINUTE ORDER, March 15, 2011

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and Engineering Department. *This condition shall be completed prior to issuance of the building permit.*

5. The Applicant shall obtain Design Review approval, including Site Plan Review and Architectural Review for the project *prior to issuance of the Building Permit*. This condition shall be completed to the satisfaction of the Community Development Department.
6. The Applicant shall either obtain approval of a Lot Line Adjustment or Lot Merger to remove the property line out from under the future building to the satisfaction of the Community Development Department and Engineering Department. *This condition shall be completed prior to issuance of the Building Permit.*
7. The Applicant shall comply with the recommendations of the traffic study, as amended and approved by the City, to the satisfaction of the City Engineering Department. *This condition shall be completed prior to issuance of the Building Department Certificate of Occupancy for the new facility.*
8. The Applicant shall improve the existing bus stop on Tydd Street to the satisfaction of the City Engineering Department and Transit Authority. *This condition shall be completed prior to issuance of the Building Department Certificate of Occupancy for the new facility.*

NOTE: If the Applicant gains secondary access to the project via the Humboldt Plaza on the north end of the project site, the Applicant shall coordinate with Caltrans to assure no adverse impact to the State highway system.

and granted the Coastal Development Permit subject to the Conditions of Approval.

Adopted on motion by Councilmember Madsen, seconded by Councilmember Atkins, and the following vote:

AYES: BRADY, ATKINS, NEWMAN, JÄGER, MADSEN
NOES: NONE
ABSENT: NONE
ABSTAIN: NONE

STATE OF CALIFORNIA)
County of Humboldt) ss.
City of Eureka)

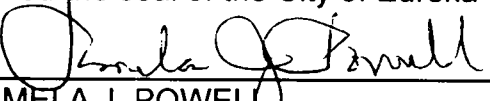
MINUTE ORDER, March 15, 2011

ITEM: 3

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I, PAMELA J. POWELL, City Clerk of the City of Eureka, do hereby certify the foregoing to be a true and correct copy of the original made in the above entitled matter by said City Council/Agency as the same now appears of record in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the City of Eureka on March 18, 2011.



PAMELA J. POWELL
CITY CLERK

Originating Dept. Community Development

Agenda Item 3

CITY COUNCIL/REDEVELOPMENT AGENCY, CITY OF EUREKA
COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

MINUTE ORDER

Certified copy of portion of proceedings. Meeting of March 15, 2011.

SUBJECT: Public comment period

ACTION:

The following individuals addressed the council at this time:

Fred Nelson, Eureka has been in contact with a Kamisu, Japan Sister City delegate and they are doing well. Mr. Nelson also submitted a letter to the Council regarding PG&E's Smart Meter program.

Sue Pierce submitted a sample resolution that the City of Eureka could adopt regarding the installation of Smart Meters.

Rebecca Crosby would like the Council to adopt a moratorium on Smart Meters. She has concerns over the radiation that is emitted by Smart Meters.


Dennis Scott, Eureka presented statistics from the Eureka Police Department.

Unknown Eureka Resident with concerns about the earthquake in Japan.

STATE OF CALIFORNIA)
County of Humboldt) ss.
City of Eureka)

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PAMELA J. POWELL
CITY CLERK

Originating Dept.

Agenda Item 4

CITY COUNCIL/REDEVELOPMENT AGENCY, CITY OF EUREKA
COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

MINUTE ORDER

Certified copy of portion of proceedings. Meeting of March 15, 2011.

SUBJECT: Amendment to Job Specification

ACTION:

Council amended the job specification of Support Services Manager (Police Department) by changing the job title to Project Manager and adopted an amended Koff Study job specification for Project Manager which includes appending a Police Department assignment option to the essential job functions.


Adopted on motion by Councilmember Madsen, seconded by Councilmember Atkins, and the following vote:

AYES: BRADY, ATKINS, NEWMAN, CIARABELLINI, MADSEN
NOES: NONE
ABSENT: NONE
ABSTAIN: NONE

STATE OF CALIFORNIA)
County of Humboldt) ss.
City of Eureka)

I, PAMELA J. POWELL, City Clerk of the City of Eureka, do hereby certify the foregoing to be a true and correct copy of the original made in the above entitled matter by said City Council/Agency as the same now appears of record in my office.

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PAMELA J. POWELL
CITY CLERK

Originating Dept. Personnel

Agenda Item 5

CITY COUNCIL/REDEVELOPMENT AGENCY, CITY OF EUREKA
COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

MINUTE ORDER

Certified copy of portion of proceedings. Meeting of March 15, 2011.

SUBJECT: Sidewalk Improvement Project Bid No. 2011-7

ACTION:

Council awarded Bid No. 2011-7 to lowest responsive bidder, V and C Construction in the amount of \$48,143.00.

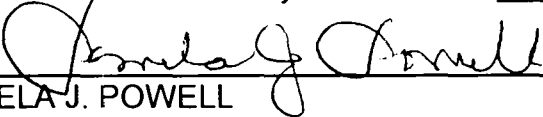
Adopted on motion by Councilmember Madsen, seconded by Councilmember Atkins, and the following vote:

AYES: BRADY, ATKINS, NEWMAN, CIARABELLINI, MADSEN
NOES: NONE
ABSENT: NONE
ABSTAIN: NONE

STATE OF CALIFORNIA)
County of Humboldt) ss.
City of Eureka)

I, PAMELA J. POWELL, City Clerk of the City of Eureka, do hereby certify the foregoing to be a true and correct copy of the original made in the above entitled matter by said City Council/Agency as the same now appears of record in my office.

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PAMELA J. POWELL
CITY CLERK

Originating Dept. Assistant City Manager

Agenda Item 6

CITY COUNCIL/REDEVELOPMENT AGENCY, CITY OF EUREKA
COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

MINUTE ORDER

Certified copy of portion of proceedings. Meeting of March 15, 2011.

SUBJECT: Eureka Public Financing Authority Dept Issuance

ACTION: Finance Director, Paul Rodriguez provided a report. The following members of the public addressed the Council regarding this matter:

Lisa Ollivier, Eureka

Council adopted Resolution No. EPFA 31 of the governing board of the Eureka Public Financing Authority Wastewater Revenue Bonds, Series 2011 and execution and delivery of a trust agreement, an installment purchase agreement, a bond purchase contract and an official statement in connection therewith and approved a preliminary official statement therefore and delegated to the Secretary of the Authority the power to authorize the sale of said bonds and to take certain related actions in connection therewith; and Adopted Resolution No. 2011-21 of the City Council authorizing execution of an installment purchase agreement with the Eureka Public Financing Authority and a bond purchase contract with said Authority and Piper Jaffray & Co. in connection with the financing of the City's 2011 wastewater project.

Adopted on motion by Councilmember Madsen, seconded by Councilmember Ciarabellini, and the following vote:

AYES: BRADY, ATKINS, NEWMAN, CIARABELLINI, MADSEN

NOES: NONE


ABSENT: NONE

ABSTAIN: NONE

STATE OF CALIFORNIA)
County of Humboldt) ss.
City of Eureka)

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IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the City of Eureka on March 18, 2011.



PAMELA J. POWELL
CITY CLERK

Originating Dept. Finance

Agenda Item 7

CITY COUNCIL/REDEVELOPMENT AGENCY, CITY OF EUREKA
COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

MINUTE ORDER

Certified copy of portion of proceedings. Meeting of March 15, 2011.

SUBJECT: Bid Protest Procedure Policy

ACTION:

Council adopted Policy No. 6.20 "Bid Protest Procedure" as a policy of the City Council.

Adopted on motion by Councilmember Madsen, seconded by Councilmember Atkins, and the following vote:

AYES: BRADY, ATKINS, NEWMAN, CIARABELLINI, MADSEN

NOES: NONE

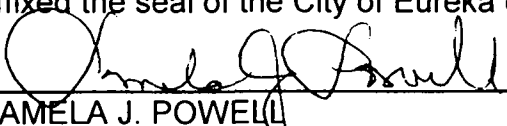
ABSENT: NONE

ABSTAIN: NONE

STATE OF CALIFORNIA)
County of Humboldt) ss.
City of Eureka)

I, PAMELA J. POWELL, City Clerk of the City of Eureka, do hereby certify the foregoing to be a true and correct copy of the original made in the above entitled matter by said City Council/Agency as the same now appears of record in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the City of Eureka on March 18, 2011.



PAMELA J. POWELL
CITY CLERK

Originating Dept. Assistant City Manager

Agenda Item 8

CITY COUNCIL/REDEVELOPMENT AGENCY, CITY OF EUREKA
COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

MINUTE ORDER

Certified copy of portion of proceedings. Meeting of March 15, 2011.

SUBJECT: Street Overlay 2010 Bid No. 2010-18

ACTION:

Council accepted Street Overlay 2010 construction project and authorized the filing of a "Notice of Completion" at the Office of the County Recorder.

Adopted on motion by Councilmember Madsen, seconded by Councilmember Atkins, and the following vote:

AYES: BRADY, ATKINS, NEWMAN, CIARABELLINI, MADSEN

NOES: NONE

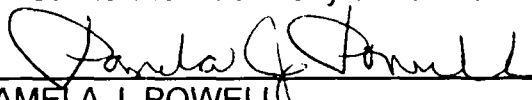
ABSENT: NONE

ABSTAIN: NONE

STATE OF CALIFORNIA)
County of Humboldt) ss.
City of Eureka)

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PAMELA J. POWELL
CITY CLERK

Originating Dept. Assistant City Manager

Agenda Item 9

CITY COUNCIL/REDEVELOPMENT AGENCY, CITY OF EUREKA
COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

MINUTE ORDER

Certified copy of portion of proceedings. Meeting of March 15, 2011.

SUBJECT: Martin Slough Interceptor Phase 1 Easement Acquisitions

ACTION:

City Engineer, Kurt Gierlich provided a report. No one from the public addressed the Council regarding this matter.

Council authorized staff to finalize negotiations with eight property owners for the acquisition of seventeen (17) easements for the Martin Slough Interceptor Project Phase 1; and Approved an expenditure up to \$45,000 in Wastewater Funds for the acquisition of seventeen (17) easements for the Martin Slough Interceptor Project Phase 1; and Authorized the City Manager to execute the documents to complete the acquisition of seventeen (17) easements for the Martin Slough Interceptor Project Phase 1.


Adopted on motion by Councilmember Atkins, seconded by Councilmember Newman, and the following vote:

AYES: BRADY, ATKINS, NEWMAN, CIARABELLINI, MADSEN
NOES: NONE
ABSENT: NONE
ABSTAIN: NONE

STATE OF CALIFORNIA)
County of Humboldt) ss.
City of Eureka)

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PAMELA J. POWELL
CITY CLERK

CITY COUNCIL/REDEVELOPMENT AGENCY, CITY OF EUREKA
COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

MINUTE ORDER

Certified copy of portion of proceedings. Meeting of March 15, 2011.

SUBJECT: Highway Safety Improvement Program Project HSI

ACTION:

Assistant City Manager Mike Knight and Traffic Engineer, Sheila Parrott provided a report. No one from the public addressed the council regarding this subject matter.

Council adopted Resolution No. 2011-17 accepting the HSIP Grant Project No. HSIP4-01-003 in the amount of \$338,5000, for the West Avenue Improvement Project; and Authorized the Assistant City Manager to execute all documents, agreements, applications, and payment requests which may be necessary for the completion of the project; and Approved local match funding of \$37,610 from Proposition 42 gas tax funds.

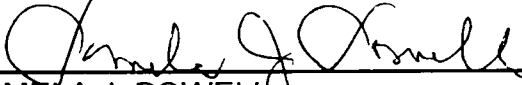
Adopted on motion by Councilmember Atkins, seconded by Councilmember Ciarabellini, and the following vote:

AYES: BRADY, ATKINS, NEWMAN, CIARABELLINI, MADSEN
NOES: NONE
ABSENT: NONE
ABSTAIN: NONE

STATE OF CALIFORNIA)
County of Humboldt) ss.
City of Eureka)

I, PAMELA J. POWELL, City Clerk of the City of Eureka, do hereby certify the foregoing to be a true and correct copy of the original made in the above entitled matter by said City Council/Agency as the same now appears of record in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the City of Eureka on March 18, 2011.



PAMELA J. POWELL
CITY CLERK

CITY COUNCIL/REDEVELOPMENT AGENCY, CITY OF EUREKA
COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

MINUTE ORDER

Certified copy of portion of proceedings. Meeting of March 15, 2011.

SUBJECT: Adult Softball Program

ACTION: Public Works Director, Bruce Young provided a report. The following individuals addressed the council regarding this subject matter:

Richard Marks, Samoa

Don McCloud, Eureka

Florence Consellati, Lost Coast Brewery Bruisers Softball Team

Rick Littlefield, Eureka

Pete Oliver, Eureka

Billy Sprague, Eureka

Burt Berg, Eureka

Victoria Joyce, Eureka

Council restored the Adult Softball Program by utilizing higher participation fees to offset program costs and adopted Resolution No. 2011-20 of the City Council to increase participation fees by 28% for the Adult Softball Program.

Adopted on motion by Councilmember Atkins, seconded by Councilmember Brady, and the following vote:

AYES: BRADY, ATKINS, NEWMAN, CIARABELLINI, MADSEN

NOES: NONE


ABSENT: NONE

ABSTAIN: NONE

STATE OF CALIFORNIA)
County of Humboldt) ss.
City of Eureka)

I, PAMELA J. POWELL, City Clerk of the City of Eureka, do hereby certify the foregoing to be a true and correct copy of the original made in the above entitled matter by said City Council/Agency as the same now appears of record in my office.

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PAMELA J. POWELL
CITY CLERK

Originating Dept. Public Works

Agenda Item 12

CITY COUNCIL/REDEVELOPMENT AGENCY, CITY OF EUREKA
COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

MINUTE ORDER

Certified copy of portion of proceedings. Meeting of March 15, 2011.

SUBJECT: Funding for Eureka Waterfront Access Project

ACTION:

Project Manger, Miles Slattery provided a report. No one from the public addressed the council regarding this subject matter.

Council adopted Resolution No. 2011-18 of the City Council approving the grant of funds from the State Coastal Conservancy for Eureka Waterfront Access Project (Grant Agreement No.10-068)

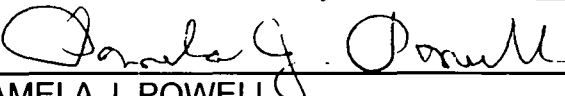
Adopted on motion by Councilmember Brady, seconded by Councilmember Newman, and the following vote:

AYES: BRADY, ATKINS, NEWMAN, CIARABELLINI, MADSEN
NOES: NONE
ABSENT: NONE
ABSTAIN: NONE

STATE OF CALIFORNIA)
County of Humboldt) ss.
City of Eureka)

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PAMELA J. POWELL
CITY CLERK

Originating Dept. Public Works

Agenda Item 13

CITY COUNCIL/REDEVELOPMENT AGENCY, CITY OF EUREKA
COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

MINUTE ORDER

Certified copy of portion of proceedings. Meeting of March 15, 2011.

SUBJECT: Recess.

ACTION:


Without objection, the council elected to take a brief recess at 8:35 P.M.

At 8:35 P.M. Council reconvened with all present.

STATE OF CALIFORNIA)
County of Humboldt) ss.
City of Eureka)

I, PAMELA J. POWELL, City Clerk of the City of Eureka, do hereby certify the foregoing to be a true and correct copy of the original made in the above entitled matter by said City Council/Agency as the same now appears of record in my office.

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PAMELA J. POWELL
CITY CLERK

CITY COUNCIL/REDEVELOPMENT AGENCY, CITY OF EUREKA
COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

MINUTE ORDER

Certified copy of portion of proceedings. Meeting of March 15, 2011.

SUBJECT: Watershed Restoration Efforts

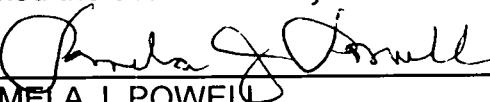
ACTION:

Council pulled this item from the agenda and it was not discussed.

STATE OF CALIFORNIA)
County of Humboldt) ss.
City of Eureka)

I, PAMELA J. POWELL, City Clerk of the City of Eureka, do hereby certify the foregoing to be a true and correct copy of the original made in the above entitled matter by said City Council/Agency as the same now appears of record in my office.

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PAMELA J. POWELL
CITY CLERK

Originating Dept. Public Works

Agenda Item 14

CITY COUNCIL/REDEVELOPMENT AGENCY, CITY OF EUREKA
COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

MINUTE ORDER

Certified copy of portion of proceedings. Meeting of March 15, 2011.

SUBJECT: Medical Cannabis Selection Committee Recommendations

ACTION:

City Manager, David Tyson and Community Development Director, Sidnie Olson provided a report. Laura Benedict of Compassionate Care, Kelly Dodds of Humboldt Bay Wellness and Gerald Wilson and Chris Van Hook of Natural Green Health Center presented their projects to the Council. The following individuals addressed the council regarding this subject matter:

Sharon Letts, Samoa
Craig Carroll, Samoa
Nickolas Bravo, Eureka
Sylvia Scott, Eureka
Sally Upatisring, Eureka
Greg Allen, ACLU
Matt Seers, Eureka
Kristin Nevedal, Eureka
Joey Burger, Garberville
Linda Anne Cummings, Eureka
Jennifer Henderson, Eureka
Steve Keener, Eureka
Nancy LaVallee, Eureka
Charley Custer, Redway
Chris Van Hook
Jeff Leonard, Eureka
Chuck Edwards

Councilmember Atkins motioned that Council invite Compassionate Care of Eureka, to submit an application for a Conditional Use Permit to establish a medical cannabis cultivation, production and distribution facility in City Limits; and Invite Humboldt Bay Wellness to submit an application for a Conditional Use Permit to establish a medical cannabis distribution only facility in City Limits; and Invite Natural Green Health Center to submit an application for a Conditional Use Permit to establish a medical cannabis cultivation, product and distribution facility in City Limits. Councilmember Newman seconded the motion. Councilmember Madsen cannot support the motion as stated but could support inviting Compassionate Care of Eureka and Natural Green Health Center to submit an application for a Conditional Use Permit as their dispensaries cultivate their own

MINUTE ORDER March 15, 2011
ITEM 15
Page 2

Product. Councilmember Atkins accepts the amendment to the motion and Councilmember Newman seconds the amended motion.

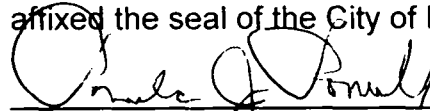
Adopted on motion by Councilmember Atkins, seconded by Councilmember Newman, and the following vote:

AYES: BRADY, ATKINS, NEWMAN, CIARABELLINI, MADSEN
NOES: NONE
ABSENT: NONE
ABSTAIN: NONE

STATE OF CALIFORNIA)
County of Humboldt) ss.
City of Eureka)

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PAMELA J. POWELL
CITY CLERK

Originating Dept. City Manager

Agenda Item 15

CITY COUNCIL/REDEVELOPMENT AGENCY, CITY OF EUREKA
COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

MINUTE ORDER

Certified copy of portion of proceedings. Meeting of March 15, 2011.

SUBJECT: Martin Slough Interceptor Phase 1 – Consultant Service during Construction

ACTION:

City Engineer, Kurt Gierlich provided a report. No one from the public addressed the council regarding this subject matter.

Council authorized staff to prepare and execute contracts with consultant firms for services during construction for Phase 1 of the Martin Slough Interceptor project.

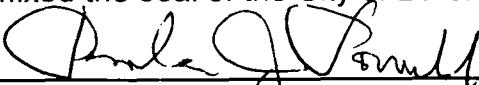
Adopted on motion by Councilmember Ciarabellini, seconded by Councilmember Madsen, and the following vote:

AYES: BRADY, ATKINS, NEWMAN, CIARABELLINI, MADSEN
NOES: NONE
ABSENT: NONE
ABSTAIN: NONE

STATE OF CALIFORNIA)
County of Humboldt) ss.
City of Eureka)

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PAMELA J. POWELL
CITY CLERK

Originating Dept. Assistant City Manager

Agenda Item 16

CITY COUNCIL/REDEVELOPMENT AGENCY, CITY OF EUREKA
COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

MINUTE ORDER

Certified copy of portion of proceedings. Meeting of March 15, 2011.

SUBJECT: Finance Advisory Committee Work Program

ACTION:

City Manager, David Tyson provided a report. No one from the public addressed the council regarding this subject matter.

Council directed the Finance Advisory Committee to provide a report on the City budget and financial policies and to provide a report on City infrastructure and proposed funding alternatives. Direction was given to staff to agendize the Measure O Oversight Committee at the April 5, 2011 Regular meeting.

Adopted on motion by Councilmember Madsen, seconded by Councilmember Ciarabellini, and the following vote:

AYES: BRADY, ATKINS, NEWMAN, CIARABELLINI, MADSEN
NOES: NONE
ABSENT: NONE
ABSTAIN: NONE

STATE OF CALIFORNIA)
County of Humboldt) ss.
City of Eureka)

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PAMELA J. POWELL
CITY CLERK

Originating Dept. City Manager

Agenda Item 17

CITY COUNCIL/REDEVELOPMENT AGENCY, CITY OF EUREKA
COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

MINUTE ORDER

Certified copy of portion of proceedings. Meeting of March 15, 2011.

SUBJECT: Coastal Commission Appointment

ACTION:

City Manager, David Tyson provided a report. No one from the public addressed the council regarding this subject matter.

Council nominated Humboldt County Supervisor Virginia Bass as the City of Eureka Supervisor nominee to the California Coastal Commission.

Adopted on motion by Councilmember Madsen, seconded by Councilmember Ciarabellini, and the following vote:

AYES: BRADY, NEWMAN, CIARABELLINI, MADSEN
NOES: ATKINS
ABSENT: NONE
ABSTAIN: NONE

Council nominated Fortuna City Councilmember Ken Zanzi as the City of Eureka Councilmember nominee to the California Coastal Commission.

Adopted on motion by Councilmember Madsen, seconded by Councilmember Newman, and the following vote:

AYES: NEWMAN, CIARABELLINI, MADSEN
NOES: BRADY, ATKINS
ABSENT: NONE
ABSTAIN: NONE

STATE OF CALIFORNIA)
County of Humboldt) ss.
City of Eureka)

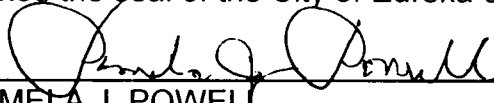
MINUTE ORDER, March 15, 2011

Page 2

Item 18

I, PAMELA J. POWELL, City Clerk of the City of Eureka, do hereby certify the foregoing to be a true and correct copy of the original made in the above entitled matter by said City Council/Agency as the same now appears of record in my office.

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PAMELA J. POWELL
CITY CLERK

Originating Dept.

Agenda Item 18

CITY COUNCIL/REDEVELOPMENT AGENCY, CITY OF EUREKA
COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

MINUTE ORDER

Certified copy of portion of proceedings. Meeting of March 15, 2011.

SUBJECT: Fee Waiver for Use of Adorni Building

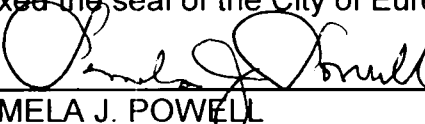
ACTION:

Council pulled this item from the agenda and it was not discussed.

STATE OF CALIFORNIA)
County of Humboldt) ss.
City of Eureka)

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PAMELA J. POWELL
CITY CLERK

Originating Dept. City Manager

Agenda Item 17

CITY COUNCIL/REDEVELOPMENT AGENCY, CITY OF EUREKA
COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

MINUTE ORDER

Certified copy of portion of proceedings. Meeting of March 15, 2011.

SUBJECT: City Manager/Executive Director's reports

ACTION:

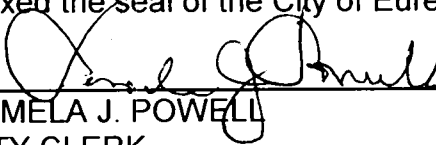
City Manager Tyson provided information regarding the following:

- No reports made.

STATE OF CALIFORNIA)
County of Humboldt) ss.
City of Eureka)

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PAMELA J. POWELL
CITY CLERK

Originating Dept. City Manager

CITY COUNCIL/REDEVELOPMENT AGENCY, CITY OF EUREKA
COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

MINUTE ORDER

Certified copy of portion of proceedings. Meeting of March 15, 2011.

SUBJECT: Adjournment

ACTION:

Without objection, the meeting was adjourned at 11:50 P.M.

STATE OF CALIFORNIA)
County of Humboldt) ss.
City of Eureka)


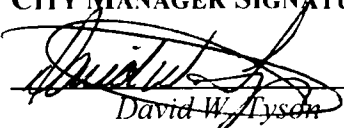
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PAMELA J. POWELL
CITY CLERK

AGENDA SUMMARY

RE: SQUIRES, FLOYD	FOR AGENDA DATE: APRIL 19, 2011 AGENDA ITEM NO.: 6	
RECOMMENDATION: Reject the claim for damages.		
SUMMARY: Tort claim in which claimant alleges lost rents, lost profits, loss of use of property, unwarranted repairs and emotional distress due to City code enforcement action on property owned by him.		
PROCEDURE: The proposed rejection of a claim is one step in what is typically a multi-step process, as provided for by the City Municipal Code, and the City tort claims and review process. Unless the claim is patently due and payable to the claimant, all claims are		
<i>Continued page 2</i>		
FISCAL IMPACT: Claimants seek unspecified damages.		
DEPARTMENT HEAD SIGNATURE:  William R. Bragg City Attorney	CITY MANAGER SIGNATURE:  David W. Tyson City Manager	
REVIEWED BY: Risk Manager Chief Building Official	DATE: 4/6/11 4/6/11	INITIALS: PJP EG
Council Action: <div style="display: flex; justify-content: space-between; margin-top: 20px;"> Ordinance No. _____ Resolution No. _____ </div>		

RE: SQUIRES, FLOYD	FOR AGENDA DATE: APRIL 19, 2011 AGENDA ITEM NO.: <i>Page 2</i>
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SUMMARY *(continued)*

commonly rejected by the City Council at this phase. The claim is then forwarded to the coverage joint powers authority for any further appropriate action. This might include further investigation of the claim, if any appears indicated, settlement in some cases, or the defense of an ensuing legal action, as the facts and circumstances warrant.

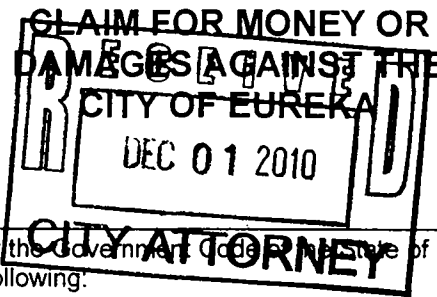
Eureka Municipal Code § 39.22 provides the City Council with the following options:

- *Reject the claim*
- *Allow the claim*
- *Allow the Claim in part, and reject it in part, if the claim is deemed valid, but the amount claimed is found to be incorrect*
- *Reject or compromise the claim if legal liability is disputed*
- *If the City Council allows the claim in whole or in part or compromises the claim, it may require the claimant, if he accepts the amount allowed or offered, to settle the claim, to accept it in settlement of the entire claim.*

In practice, however, the City's discretion in handling claims is somewhat constrained by the City's self-insurance memorandum of coverage with the Redwood Empire Municipal Insurance Fund (REMIF). In order to maintain coverage, the City has agreed to certain terms that are common in coverage agreements, including giving REMIF: the right to control, investigate, settle, or defend any claim that is covered by the coverage agreement.

Staff believes that the proposed rejection of this claim is appropriate at this time, based on currently available information, and is in conformance with the City's agreement with REMIF regarding handling of claims.

File with:
City of Eureka
531 "K" Street
Eureka, CA 95501



RESERVE FOR FILING STAMP

CLAIM NO.

DEC 01 2010

CITY CLERK

in person

A claim must be presented, as prescribed by the Government Code of the State of California, by the claimant or a person acting on his/her behalf and shall show the following:

If additional space is needed to provide your information, please attach sheets, identifying the paragraph(s) being answered.

1. Name and Post Office address of the Claimant:

Name of Claimant: Floyd E. Squires, III and Betty Squires

Post Office Address: c/o 819 Seventh Street

Eureka, CA 95501

2. Post Office address to which the person presenting the claim desires notices to be sent:

Name of Addressee: Bradford C Floyd

Telephone: (707) 445-9754

Post Office Address: 819 Seventh Street

Eureka, CA 95501

3. The date, place and other circumstances of the occurrence or transaction which gave rise to the claim asserted.

Date of Occurrence: October 22, 2010 to present Time of Occurrence: N/A

Location: See Attachment A

Circumstances giving rise to this claim: See Attachment B

4. General description of the indebtedness, obligation, injury, damage or loss incurred so far as it may be known at the time of the presentation of the claim.

Lost rents, lost profits, loss of use of property, unwarranted repairs,
emotional distress, etc.

5. The name or names of the public employee or employees causing the injury, damage, or loss, if known.

Michael Knight, Brian Gerving, Gary Boughton, councilman Larry Glass

6. **If amount claimed totals less than \$10,000:** The amount claimed if it totals less than ten thousand dollars (\$10,000) as of the date of presentation of the claim, including the estimated amount of any prospective injury, damage, or loss, insofar as it may be known at the time of the presentation of the claim, together with the basis of computation of the amount claimed.

Amount Claimed and basis for computation: Claim exceeds \$10,000.00

If amount claimed exceeds \$10,000: If the amount claimed exceeds ten thousand dollars (\$10,000), no dollar amount shall be included in the claim. However, it shall indicate whether the claim would be a limited civil case. A limited civil case is one where the recovery sought, exclusive of attorney fees, interest and court costs does not exceed \$25,000. An unlimited civil case is one in which the recovery sought is more than \$25,000. (See CCP § 86.)

☐ Limited Civil Case

☒ Unlimited Civil Case

You are required to provide the information requested above, plus your signature on page 3 of this form, in order to comply with Government Code §910. In addition, in order to conduct a timely investigation and possible resolution of your claim, the city requests that you answer the following questions.

7. Claimant(s) Date(s) of Birth:

N/A

8. Name, address and telephone number of any witnesses to the occurrence or transaction which gave rise to the claim asserted:

N/A

9. If the claim involves medical treatment for a claimed injury, please provide the name, address and telephone number of any doctors or hospitals providing treatment:

N/A

If applicable, please attach any medical bills or reports or similar documents supporting your claim.

10. If the claim relates to an automobile accident:

Claimant(s) Auto Ins. Co.: N/A

Telephone:

Address:

Insurance Policy No.:

Insurance Broker/Agent:

Telephone:

Address:

Claimant's Veh. Lic. No.:

Vehicle Make/Year:

Claimant's Drivers Lic. No.:

Expiration:

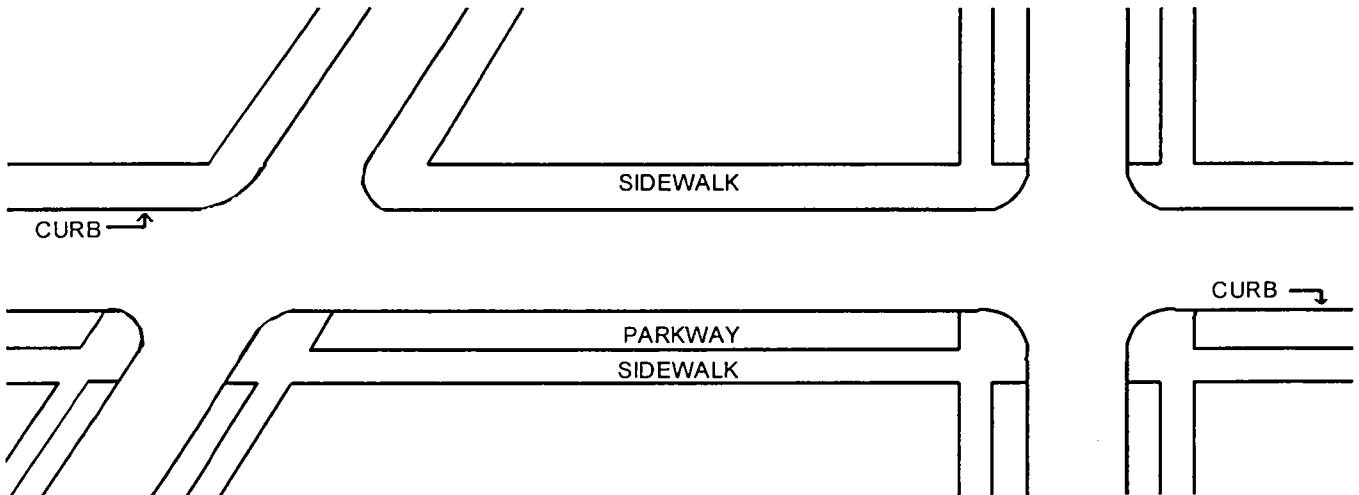
If applicable, please attach any repair bills, estimates or similar documents supporting your claim.

READ CAREFULLY

For all accident claims, place on following diagram name of streets, including North, East, South, and West; indicate place of accident by "X" and by showing house numbers or distances to street corners. If /Agency Vehicle was involved, designate by letter "A" location of /Agency Vehicle when you first saw it, and by "B" location of yourself or your vehicle when you first saw

/Agency Vehicle; location of /Agency vehicle at time of accident by "A-1" and location of yourself or your vehicle at the time of the accident by "B-1" and the point of impact by "X."

NOTE: If diagrams below do not fit the situation, attach hereto a proper diagram signed by claimant.



Warning: Presentation of a false claim with the intent to defraud is a felony (Penal Code §72). Pursuant to CCP §1038, the /Agency may seek to recover all costs of defense in the event an action is filed which is later determined not to have been brought in good faith and with reasonable cause.

Signature:

Date: November 29, 2010

Attachment A

1. 1429 Sunny Avenue
Eureka, California
2. 1233 A Street
Eureka, California
3. 607 Summer Street
Eureka, California
4. 609 Summer Street
Eureka, California

Attachment B

Certain City of Eureka employees (Michael Knight, Brian Gerving and Gary Boughton) and councilman Larry Glass have all engaged and continue to engage, individually, and in concert, in a course of conduct and pattern of harassment, which includes a conscious intent to deceive, vex, annoy or harm claimants in their business, i.e. they are motivated by corruption and/or malice.

The above wrongful conduct by the above named individuals has included, for instance, taking possession of certain of claimants' properties located in the City of Eureka, wrongfully evicting claimants' tenants, falsely swearing inspection warrants, inciting members of the public to file unfounded suits against claimants, misrepresenting and manipulating evidence, wrongfully denying claimants the right to obtain permits, filing vexatious litigation, showing up at properties owned by claimants demanding entry from their tenants without prior notice, cutting off locks to claimants' tenants' residences to gain access if tenants were not home, and generally trying to harm claimants and their business.

These individuals have conspired against, and singled claimants out, from all other property owners in this community (even though many of these property owners have property in the same or similar condition as claimants' properties) for the specific purpose of harassing, vexing, annoying and/or harming claimants. The conduct of these individuals is malicious, fraudulent and oppressive and claimants are seeking general and special damages against the City and individual employees and councilman and punitive against the individuals named in this action.

AGENDA SUMMARY**RE: WOLF, SYDELL****FOR AGENDA DATE: APRIL 19, 2011****AGENDA ITEM NO.:**

7

RECOMMENDATION:

Reject the claim for damages.

SUMMARY:

Tort claim in which claimant alleges physical injury due to trip-and-fall on City sidewalk.

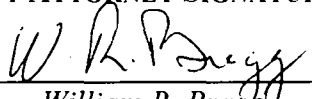
PROCEDURE:

The proposed rejection of a claim is one step in what is typically a multi-step process, as provided for by the City Municipal Code, and the City tort claims and review process. Unless the claim is patently due and payable to the claimant, all claims are

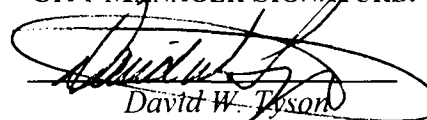
*Continued page 2***FISCAL IMPACT:**

Claimant seeks unspecified damages.

CITY ATTORNEY SIGNATURE


 William R. Bragg
 City Attorney

CITY MANAGER SIGNATURE:


 David W. Tyson
 City Manager

REVIEWED BY:

Risk Manager
 Director of Public Works

DATE:

4/6/11
 4/5/11

INITIALS:

PJP
 GAY

Council Action:

Ordinance No. _____

Resolution No. _____

SUMMARY (continued)

commonly rejected by the City Council at this phase. The claim is then forwarded to the coverage joint powers authority for any further appropriate action. This might include further investigation of the claim, if any appears indicated, settlement in some cases, or the defense of an ensuing legal action, as the facts and circumstances warrant.

Eureka Municipal Code § 39.22 provides the City Council with the following options:

- *Reject the claim*
- *Allow the claim*
- *Allow the Claim in part, and reject it in part, if the claim is deemed valid, but the amount claimed is found to be incorrect*
- *Reject or compromise the claim if legal liability is disputed*
- *If the City Council allows the claim in whole or in part or compromises the claim, it may require the claimant, if he accepts the amount allowed or offered, to settle the claim, to accept it in settlement of the entire claim.*

In practice, however, the City's discretion in handling claims is somewhat constrained by the City's self-insurance memorandum of coverage with the Redwood Empire Municipal Insurance Fund (REMIF). In order to maintain coverage, the City has agreed to certain terms that are common in coverage agreements, including giving REMIF: the right to control, investigate, settle, or defend any claim that is covered by the coverage agreement.

Staff believes that the proposed rejection of this claim is appropriate at this time, based on currently available information, and is in conformance with the City's agreement with REMIF regarding handling of claims.

File with:
City of Eureka
531 "K" Street
Eureka, CA 95501

**CLAIM FOR MONEY OR
DAMAGES AGAINST THE
CITY OF EUREKA**

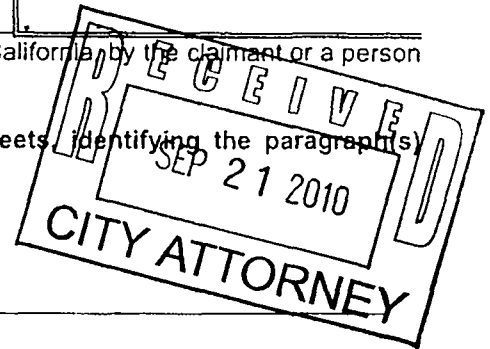
RESERVE FOR FILING STAMP

RECEIVED
SEP 17 2010

CITY CLERK

A claim must be presented, as prescribed by the Government Code of the State of California, by the claimant or a person acting on his/her behalf and shall show the following:

If additional space is needed to provide your information, please attach sheets identifying the paragraph(s) being answered.



1. Name and Post Office address of the Claimant:

Name of Claimant: Sydell Wolf
Post Office Address: 7814 Exeter Blvd E
Tamarac, Florida 33321

2. Post Office address to which the person presenting the claim desires notices to be sent:

Name of Addressee: Janssen Law Firm Telephone: 707-445-2071
Post Office Address: 730 Fifth Street
Eureka, CA 95501

3. The date, place and other circumstances of the occurrence or transaction which gave rise to the claim asserted.

Date of Occurrence: 8/23/10 Time of Occurrence: Approx. 5:00 p.m.
Location: 325 2nd St., Eureka sidewalk between D & E St. (See attached
Circumstances giving rise to this claim: Claimant, Sydell Wolf was photos of scene)
walking on the sidewalk on 2nd Street in Eureka between D & E Streets
(in the direction of the E Street intersection) when she caught her foot
on a raised section of sidewalk, causing her to fall.

4. General description of the indebtedness, obligation, injury, damage or loss incurred so far as it may be known at the time of the presentation of the claim.

Ms. Wolf sustained a right hip intertrochanteric fracture which required
open reduction and internal fixation surgery with TFN & hardware.
Emergency room treatment and surgery was performed at St. Joseph
Hospital in Eureka, CA.

5. The name or names of the public employee or employees causing the injury, damage, or loss, if known.

Department of Public Works' employees, identities presently
unknown.

6. **If amount claimed totals less than \$10,000:** The amount claimed if it totals less than ten thousand dollars (\$10,000) as of the date of presentation of the claim, including the estimated amount of any prospective injury, damage, or loss, insofar as it may be known at the time of the presentation of the claim, together with the basis of computation of the amount claimed.

Amount Claimed and basis for computation:

If amount claimed exceeds \$10,000: If the amount claimed exceeds ten thousand dollars (\$10,000), no dollar amount shall be included in the claim. However, it shall indicate whether the claim would be a limited civil case. A limited civil case is one where the recovery sought, exclusive of attorney fees, interest and court costs does not exceed \$25,000. An unlimited civil case is one in which the recovery sought is more than \$25,000. (See CCP § 86.)

☐ Limited Civil Case

☒ Unlimited Civil Case

You are required to provide the information requested above, plus your signature on page 3 of this form, in order to comply with Government Code §910. In addition, in order to conduct a timely investigation and possible resolution of your claim, the city requests that you answer the following questions.

7. Claimant(s) Date(s) of Birth: December 3, 1929
8. Name, address and telephone number of any witnesses to the occurrence or transaction which gave rise to the claim asserted:
Susan Scott (stepdaughter) 1-(954) 749-3936.
10102 N.W. 50th Street
Sunrise, FL 33351-8028
9. If the claim involves medical treatment for a claimed injury, please provide the name, address and telephone number of any doctors or hospitals providing treatment:
St. Joseph Hospital, 2700 Dolbeer St., Eureka, CA 95501;
Phone: 445-8121 and Dr. Asa Stockton, Humboldt Orthopaedic Assoc.,
2826 Harris St., Eureka, CA 95503; Phone: 443-8066.
- If applicable, please attach any medical bills or reports or similar documents supporting your claim.*
10. If the claim relates to an automobile accident:
- | | |
|------------------------------|--------------------|
| Claimant(s) Auto Ins. Co.: | Telephone: |
| Address: | |
| Insurance Policy No.: | |
| Insurance Broker/Agent: | Telephone: |
| Address: | |
| Claimant's Veh. Lic. No.: | Vehicle Make/Year: |
| Claimant's Drivers Lic. No.: | Expiration: |

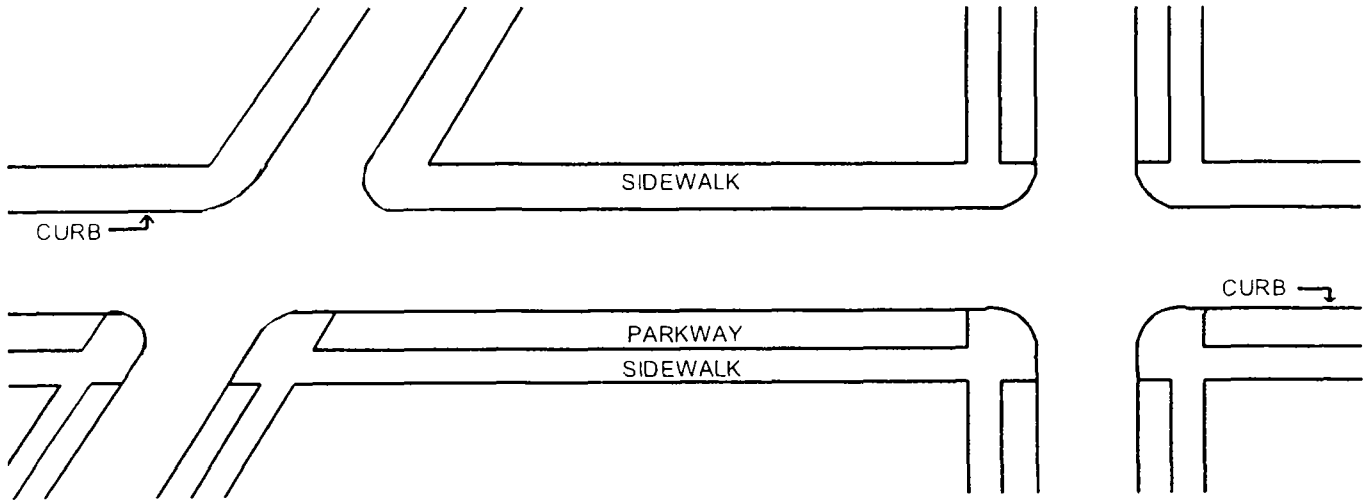
If applicable, please attach any repair bills, estimates or similar documents supporting your claim.

READ CAREFULLY

For all accident claims, place on following diagram name of streets, including North, East, South, and West; indicate place of accident by "X" and by showing house numbers or distances to street corners. If /Agency Vehicle was involved, designate by letter "A" location of /Agency Vehicle when you first saw it, and by "B" location of yourself or your vehicle when you first saw

/Agency Vehicle; location of /Agency vehicle at time of accident by "A-1" and location of yourself or your vehicle at the time of the accident by "B-1" and the point of impact by "X."

NOTE: If diagrams below do not fit the situation, attach hereto a proper diagram signed by claimant.



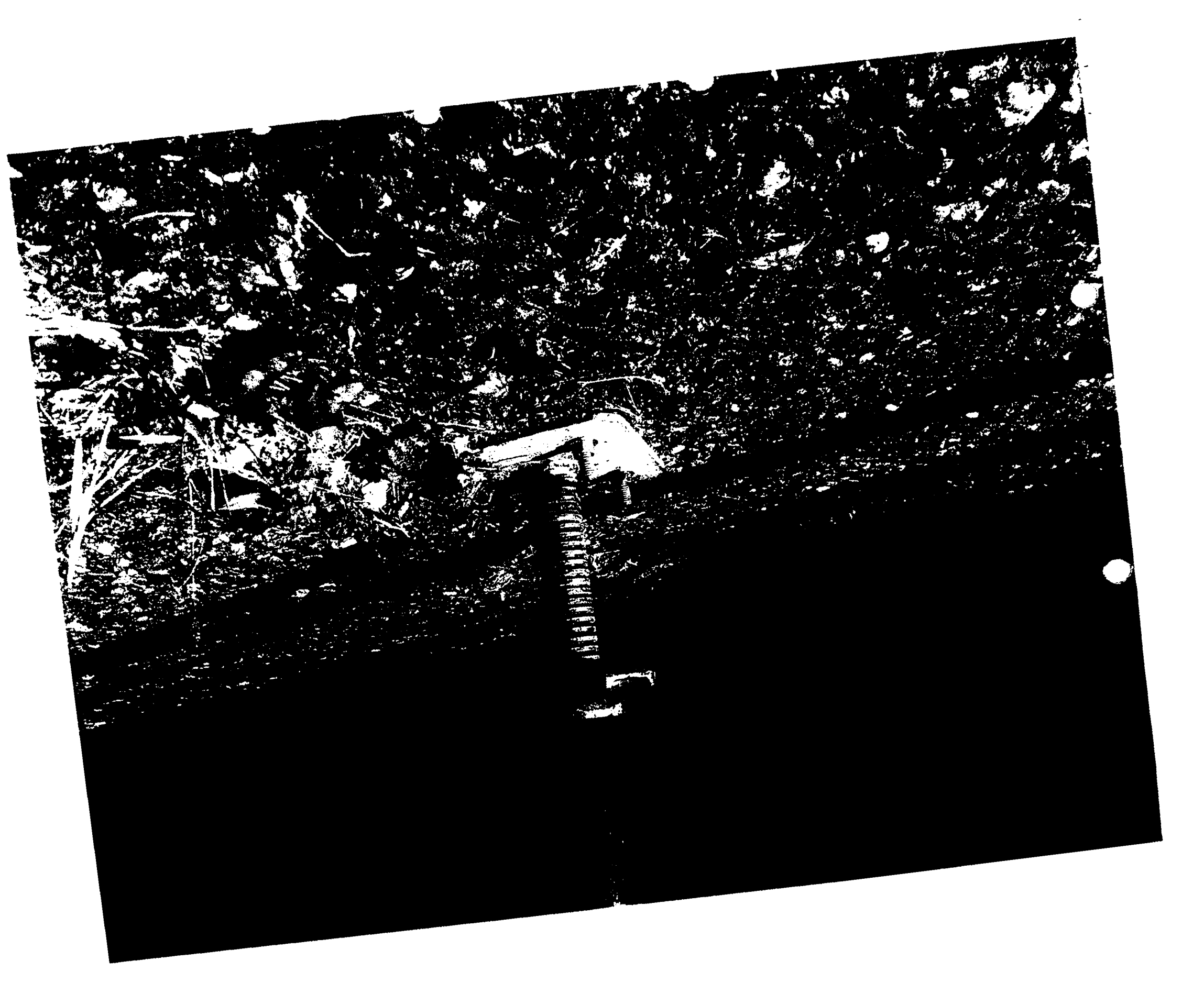
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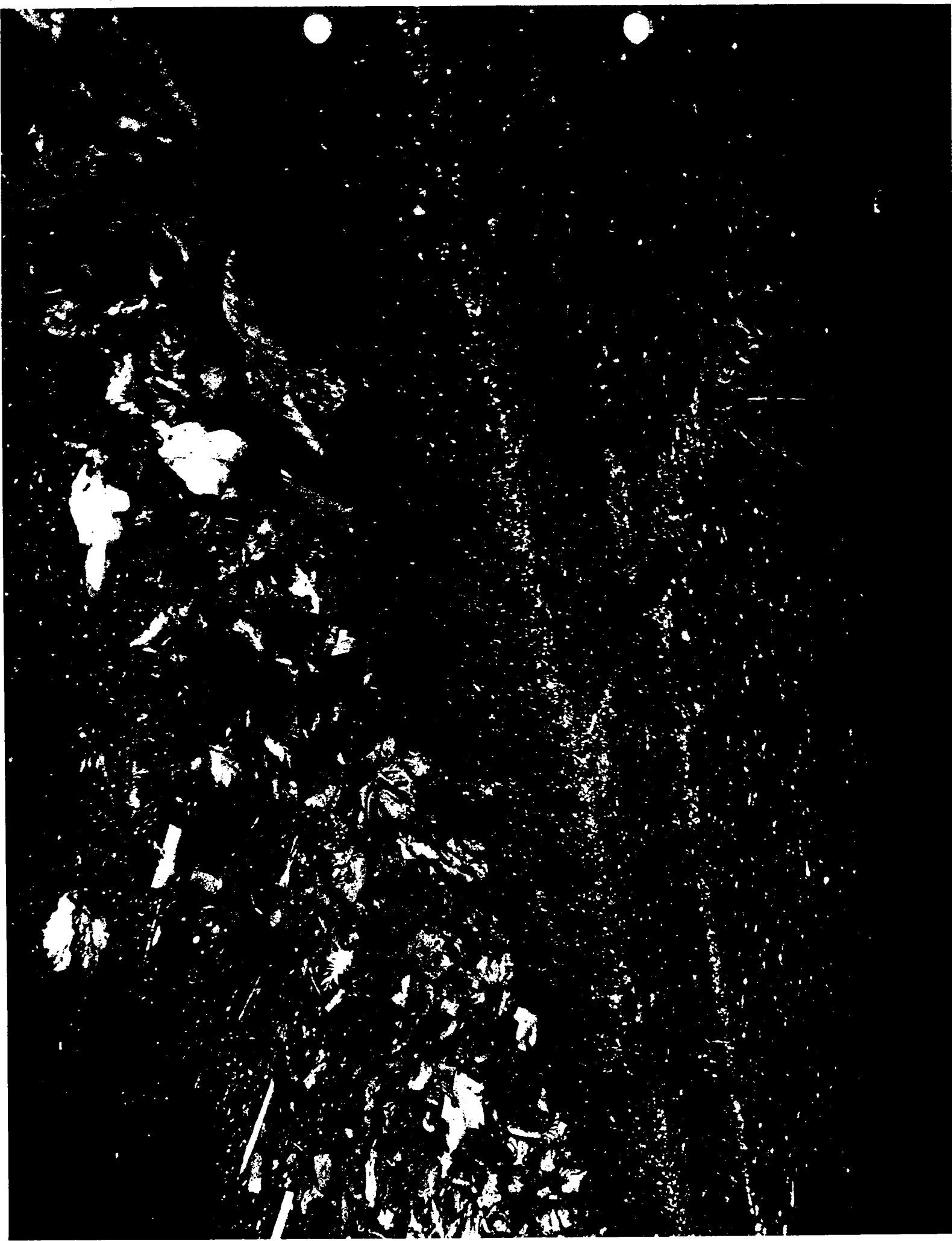
Signature: _____

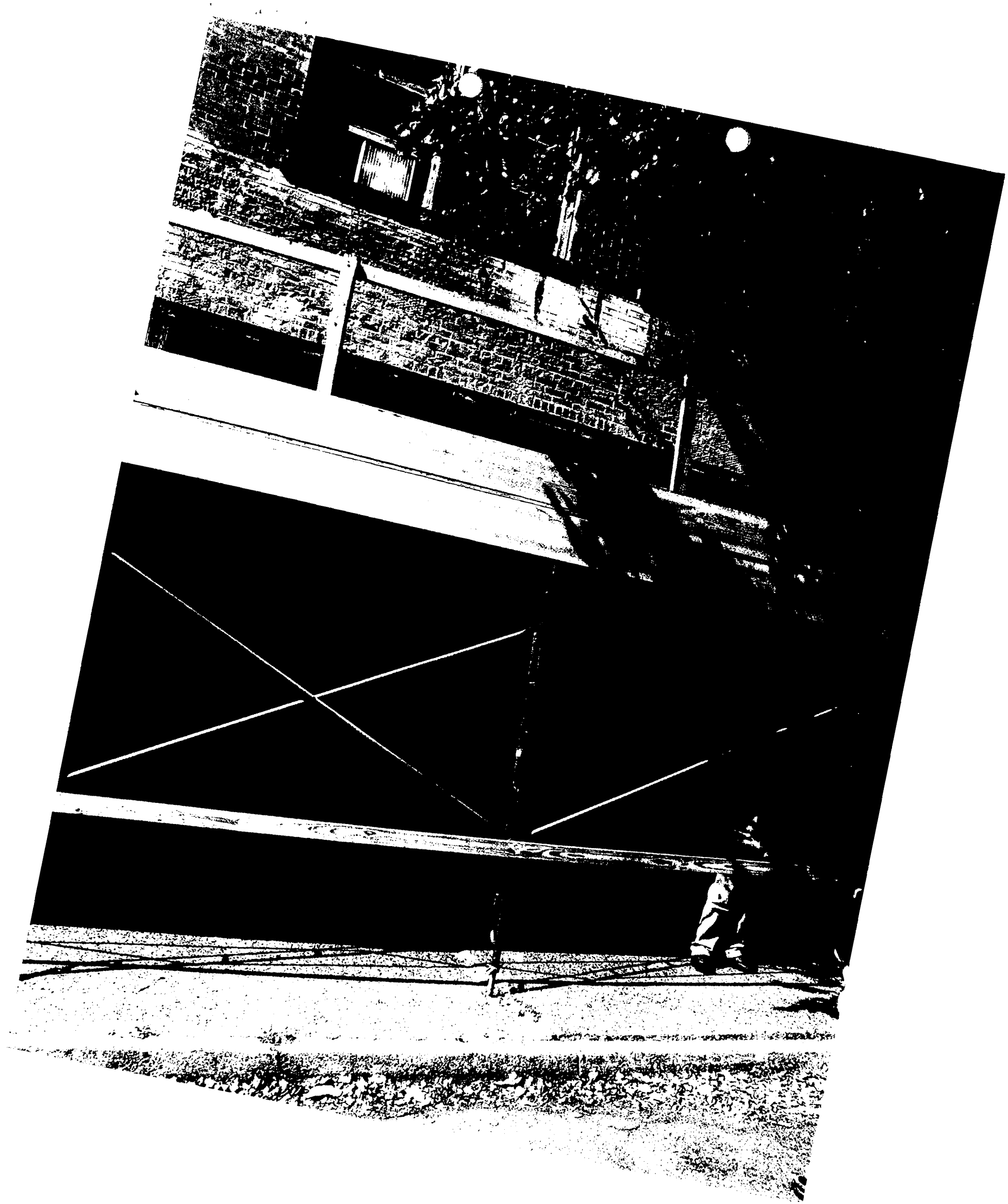
Michael J. Crowley
attorney for claimant

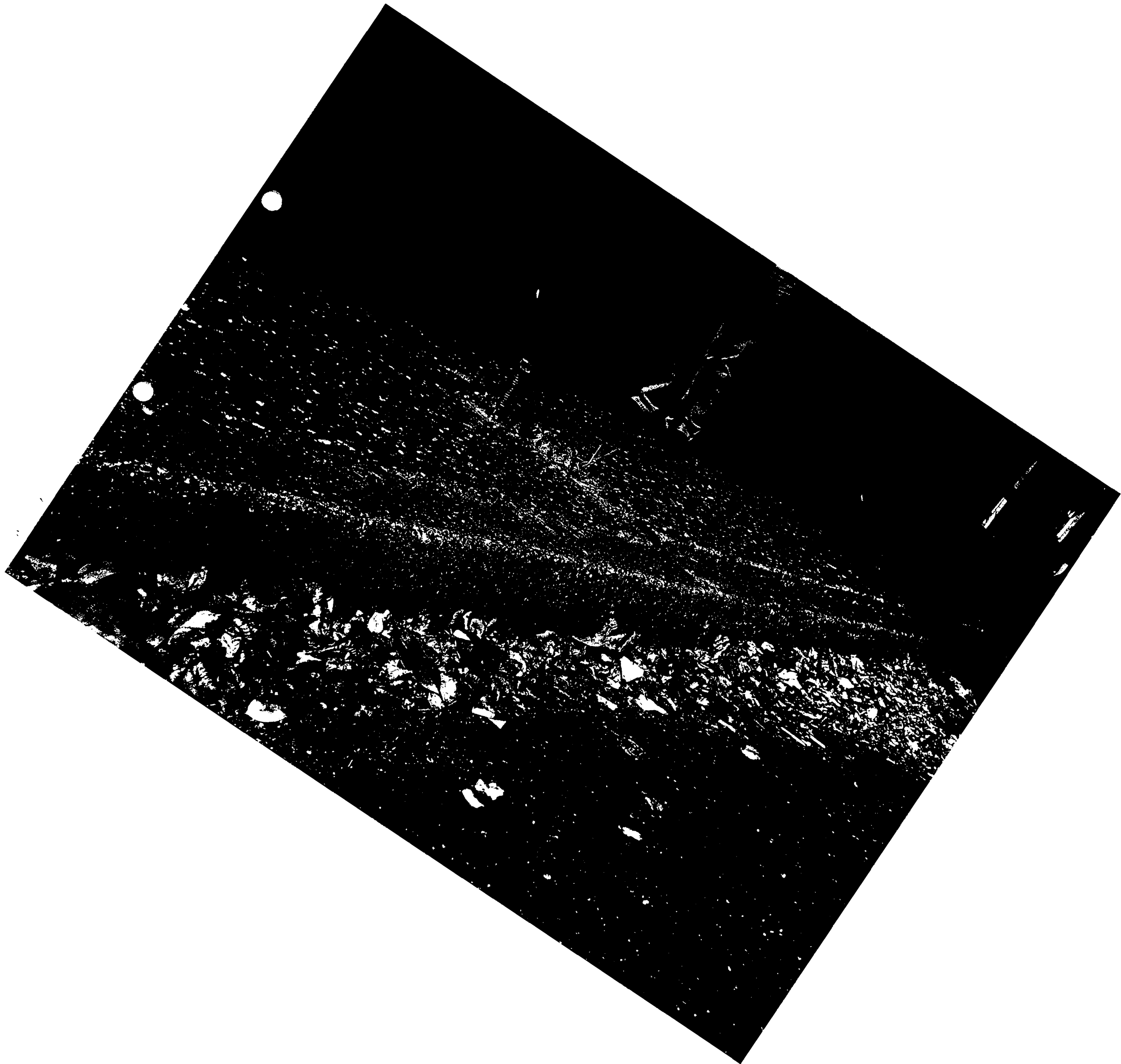
Date: _____

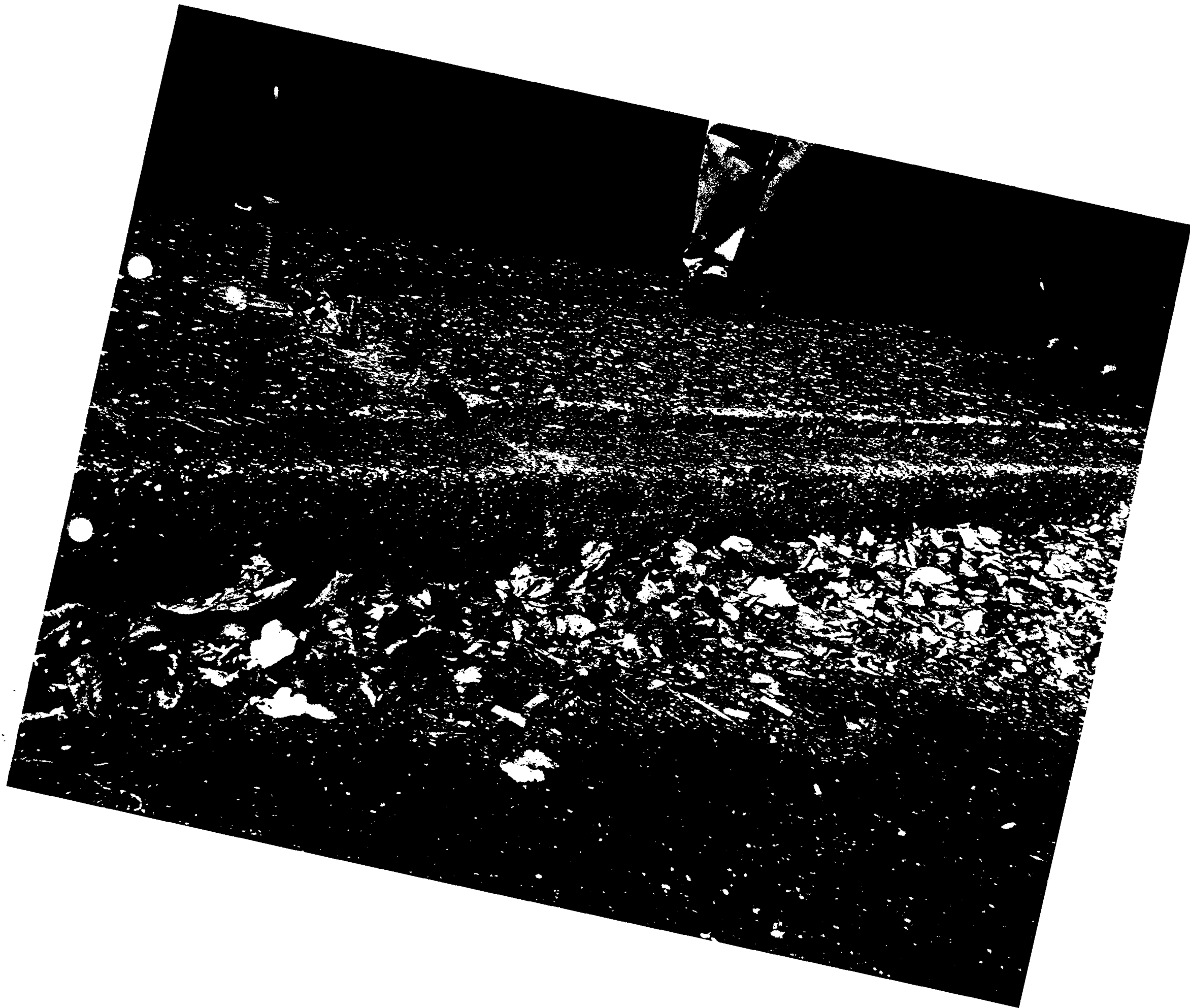
9/17/10

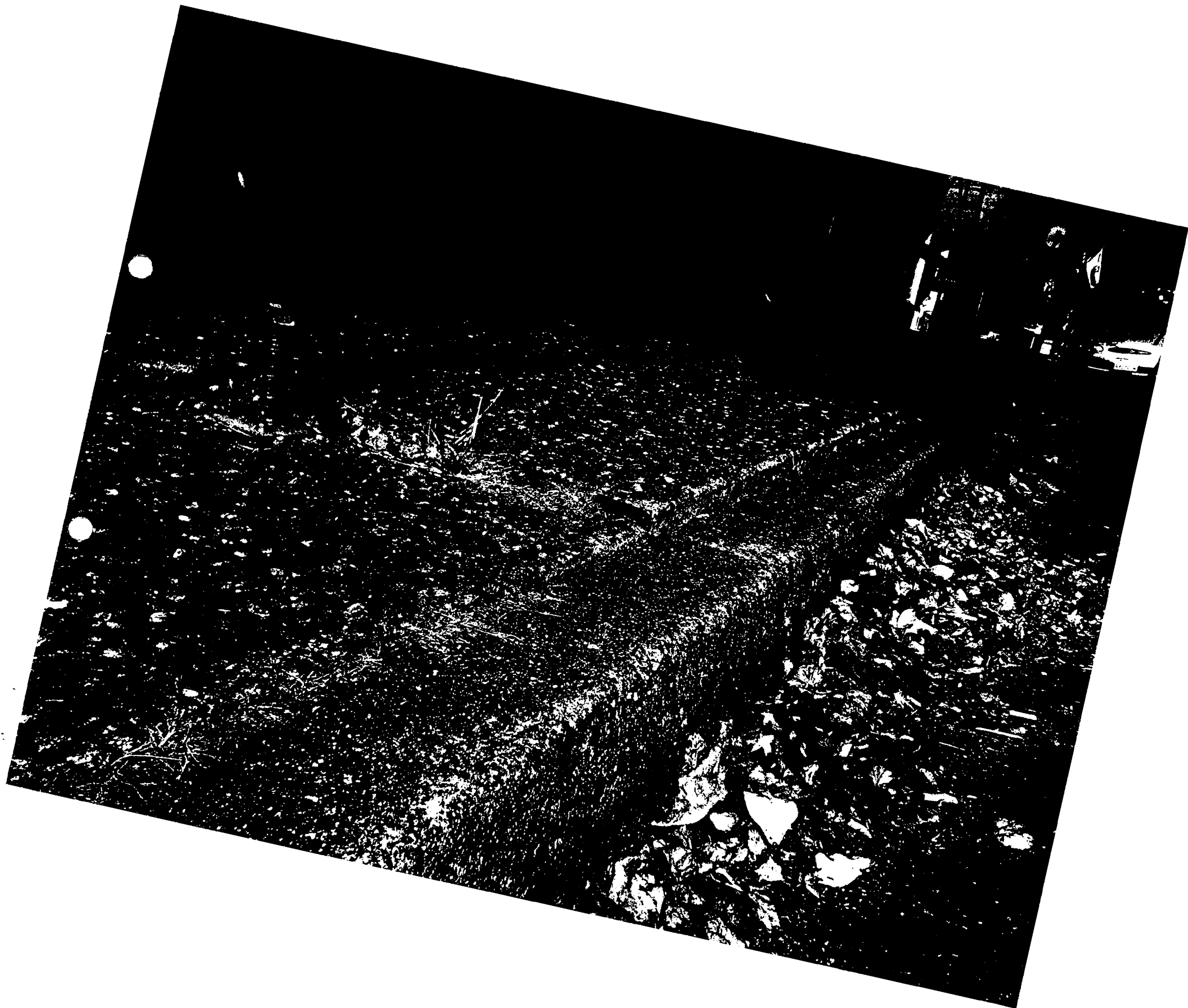


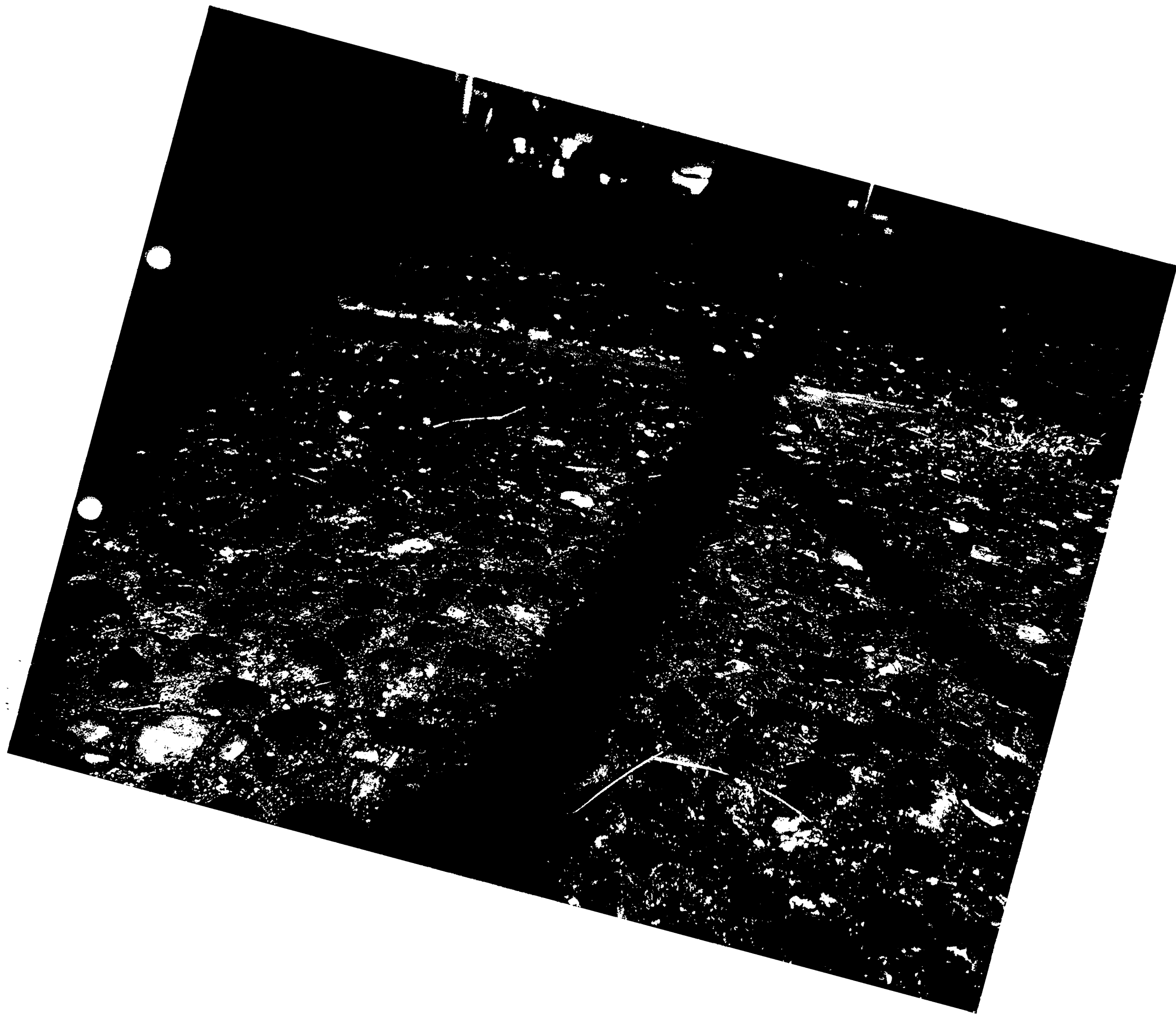












AGENDA SUMMARY

**RE: AUTHORIZATION TO PREPARE
AND SUBMIT CLAIMS FOR
TRANSIT FUNDING**

For Agenda Date: April 19, 2011

Agenda Item No: 8

RECOMMENDATION:

Council authorize staff to prepare and submit a Transportation Development Act (TDA) claim in the amount of \$810,819.

SUMMARY OF THE ISSUE:

TDA:

The Humboldt County Association of Governments (HCAOG) has provided the City of Eureka with estimated TDA funds available for the 2011-12 fiscal year. The apportionment of funds is based on city and county population estimates published annually by the State Department of Finance. TDA funding is derived from State sales tax revenues, currently at ¼% of our current tax rate. The City's TDA funds are planned to be used for the following purposes:

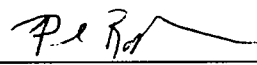
1. Operation of Eureka Transit Service.
2. City's share of Redwood Transit Service.
3. Operation of Dial-a-Ride and Dial-a-Lift service.
4. Transit equipment & bus purchases.


HCAOG indicates a 2011-12 TDA fund estimate of \$810,819 for the City of Eureka. TDA funding at this amount represents approximately 43% of the total transit operating budget expenses. Other sources of funding are the County's 27% of Eureka Transit and Dial-a-Ride/Dial-a-Lift (which also comes from TDA), fares from both systems, bus advertising revenue, and other grant applications.

SUMMARY: It is recommended that Council authorize staff to prepare and submit the TDA claim for FY 2011/12.

FISCAL IMPACT:

Revenue totaling \$810,819 for FY 2011/12 will be received to be used for Eureka Transit Service, Dial-a-Ride operations and capital purchases.

DH SIGN: 
Finance Director

CM SIGN: 
City Manager

REVIEWED BY:
City Attorney

DATE:
4/12/11

INITIALS:
WRB/TS

COUNCIL ACTION:

Ordinance No.

Resolution No.



HUMBOLDT COUNTY ASSOCIATION OF GOVERNMENTS

Members: County of Humboldt • Cities of Arcata, Blue Lake, Eureka, Ferndale, Fortuna, Rio Dell, Trinidad

March 23, 2011

To: City Managers, City Finance Officers, Humboldt County CAO

From: Marcella Clem, Executive Director

In consultation with the County Auditor, the Local Transportation Fund (LTF) Fiscal Year 2011-12 estimate is \$4,014,377. The apportionment of the funds is based on city and county population estimates published annually by the Department of Finance. The following table designates the apportionment of the estimated funds.

FY 2011-12 LTF Estimates

Entity	Population*	% of Regional Population	LTF Fund Apportionment
City of Arcata	17,231	12.80%	\$513,818
City of Blue Lake	1,253	0.93%	\$37,364
City of Eureka	27,191	20.20%	\$810,819
City of Ferndale	1,371	1.02%	\$40,882
City of Fortuna	11,926	8.86%	\$355,626
City of Rio Dell	3,368	2.50%	\$100,432
City of Trinidad	367	0.27%	\$10,944
County of Humboldt	71,916	53.42%	\$2,144,492
Total	134,623	100.00%	\$4,014,377

*California Department of Finance, Redistricting Data Summary File

(http://www.dof.ca.gov/research/demographic/state_census_data_center/census_2010/view.php)

This estimate is approximately \$608,000 more than last year's estimate of \$3,406,061, which appears to have been underestimated based on the actual revenue of \$2,210,715 for the first half of the current fiscal year. Compliant with Section 6655.5 of California Code (Title 21), any revenues to the fund for the fiscal year in excess of all moneys allocated, reserved, or retained in the fund as unallocated apportionments pursuant to Section 6655.1 shall be carried over and be available for apportionment and allocation in the following fiscal year. HCAOG will continue to work with the County Auditor regarding this requirement. Amended claims can be processed once the excess funds are reported by the County Auditor.

AGENDA SUMMARY

**RE: TRANSPORTATION DEVELOPMENT
ACT (TDA) FISCAL AND
COMPLIANCE AUDIT AND MANAGEMENT
LETTER, FISCAL YEAR 2009-10**

FOR AGENDA DATE: APRIL 19, 2011

AGENDA ITEM NO.:

9

RECOMMENDATION:

- Council receive and file the Humboldt County Association of Governments (HCAOG) Transportation Development Act (TDA) fiscal and compliance audit and the Humboldt County Association of Governments (HCAOG) Management Letter for the 2009-10 fiscal year.**

SUMMARY:

The HCAOG fiscal and compliance audits and Management Letter for the fiscal year 2009-10 were prepared by the firm of Anderson, Lucas, Somerville & Borges, LLP. The reports are attached. There are several findings in the management letter that will require action as a result of this audit.

TDA Funding

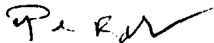
Pursuant to Section 6634 of the California Administrative Code, a transit claimant is eligible to receive monies from the Local Transportation Fund in an amount which does not exceed the claimant's operating costs, less actual fare revenues received. The City of Eureka received excess TDA funds for fiscal year \$51,801. Several courses of action are available to correct this situation. The amounts can be re-identified as monies claimed for capital, if sufficient reserves have been used for the purchase of capital assets, or in the alternative, the amounts may be adjusted on a subsequent year's TDA claim. This adjustment will be accomplished before the end of this fiscal year.

City of Eureka/Humboldt Contract Review

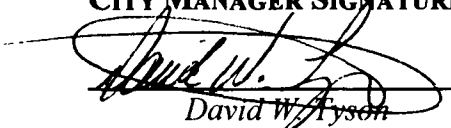
Currently the City of Eureka and the county of Humboldt have an agreement whereby the County contributes 27% of the net operating costs of the Eureka Transit System. This is intended to cover the areas served by the system that fall outside the Eureka city limits and in the County's jurisdiction. At the completion of each audit cycle, a reconciliation of the budgeted costs to actual costs for the year is completed and any excess or shortfall is adjusted into the next year's claim amount. It was noted it has been many years since the agreement was entered into by the City and County and it is likely that circumstances have occurred which would make it beneficial for the agreement to be reviewed and possibly modified. The auditor has recommended the City and County begin the process of reviewing the agreement. This process, involving both City and County staff, was initiated during the year ended June 30, 2010, and remains an ongoing project.

SUMMARY: It is recommended Council receive and file the HCAOG Fiscal & Compliance Audit and the Management Letter for fiscal year 09-10.

FISCAL IMPACT: None with this action.

DEPARTMENT HEAD SIGNATURE:


Paul Rodrigues
Finance Director

CITY MANAGER SIGNATURE:


David W. Tyson
City Manager

REVIEWED BY:

City Attorney

DATE:

4/12/11

INITIALS:

WRB
138

Council Action:

Ordinance No. _____

Resolution No. _____

**HUMBOLDT COUNTY ASSOCIATION
OF GOVERNMENTS**

**MANAGEMENT LETTER AND COMMUNICATION
WITH THOSE CHARGED WITH GOVERNANCE**

**FOR THE YEAR ENDED
June 30, 2010**



ANDERSON, LUCAS, SOMERVILLE & BORGES, LLP
CERTIFIED PUBLIC ACCOUNTANTS

ART STEWART (1945-1964)
RICHARD RODRIGUE (1950-1985)
DAVID J. SOMERVILLE (1971-1982)
DONALD J. HARRIS (1962-1994)

**1338 MAIN STREET
FORTUNA, CALIFORNIA 95540
(707)725-4483 & (707) 725-4442
Toll Free: 800-794-1643
FAX: (707) 725-6340
E-mail: team@alsb.com
www.alsb.com**

DAVID A. SOMERVILLE, II
KEITH D. BORGES
DOMINIQUE J. KILMER
KEVIN COLLIER

JAMES M. ANDERSON, *Inactive*
EUGENE B. LUCAS, *Inactive*

Board of Directors
Humboldt County Association of Governments
Eureka, California

In planning and performing our audit of the financial statements of the Humboldt County Association of Governments (HCAOG) as of and for the year ended June 30, 2010, in accordance with auditing standards generally accepted in the United States of America, we considered HCAOG's internal control over financial reporting (internal control) as a basis for designing our auditing procedures for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of HCAOG's internal control. Accordingly, we do not express an opinion on the effectiveness of HCAOG's internal control.

Our consideration of internal control was for the limited purpose described in the preceding paragraph and was not designed to identify all deficiencies in internal control that might be significant deficiencies or material weaknesses and, therefore, there can be no assurance that all such deficiencies have been identified. However, as discussed later in this letter, we identified certain deficiencies in internal control that we consider to be significant deficiencies.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct misstatements on a timely basis. A material weakness is a deficiency, or combination of deficiencies in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected on a timely basis. We did not identify any deficiencies in internal control that we consider to be material weaknesses.

A significant deficiency is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance. We consider certain of the items discussed later in this letter to be significant deficiencies.

In addition, during our audit, we noted certain matters involving the internal control structure and other operational matters that are presented for your consideration. We will review the status of these comments during our next audit engagement. Our comments and recommendations, all of which have been discussed with appropriate members of management, are not intended to be all-inclusive, but rather represent those matters that we considered worthy of your consideration. Our comments and recommendations are submitted as constructive suggestions to assist you in strengthening controls and procedures; they are not intended to reflect on the honesty or integrity of any employee. We will be pleased to discuss these comments in further detail at your convenience, to perform any additional study of these matters, or to assist the Humboldt County Association of Governments in implementing the recommendations.

Board of Directors
Humboldt County Association of Governments
Page 2

This communication is intended solely for the information and use of management, the Board of Directors, others within the organization and officials of the federal and state grantor agencies and should not be used by anyone other than these specified parties.

We thank the Humboldt County Association of Government's staff for its cooperation during our audit.

Anderson, Lucas, Pomerville & Borges

Fortuna, California
January 6, 2011

**MANAGEMENT LETTER AND COMMUNICATION
WITH THOSE CHARGED WITH GOVERNANCE**

TABLE OF CONTENTS

	<u>Page</u>
Report	1-2
Required Communication With Those Charged With Governance	3-4
Management Comments and Recommendations	5-10

REQUIRED COMMUNICATION WITH THOSE CHARGED WITH GOVERNANCE

We have audited the financial statements of the Humboldt County Association of Governments (HCAOG) for the year ended June 30, 2010. Professional standards require that we provide you with the following information about our responsibilities under generally accepted auditing standards, as well as certain information related to the planned scope and timing of our audit. We have communicated such information in a previous letter to you dated August 30, 2007. Professional standards also require that we communicate to you the following information related to our audit.

Significant Audit Findings

Qualitative Aspects of Accounting Practices

Management is responsible for the selection and use of appropriate accounting policies. The significant accounting policies used by the Humboldt County Association of Governments are described in Note 2 to the financial statements. No new accounting policies were adopted and the application of existing policies was not changed during the year. We noted no transactions entered into by the Humboldt County Association of Governments during the year for which there is a lack of authoritative guidance or consensus. All significant transactions have been recognized in the financial statements in the proper period.

Accounting estimates are an integral part of the financial statements prepared by management and are based on management's knowledge and experience about past and current events and assumptions about future events. Certain accounting estimates are particularly sensitive because of their significance to the financial statements and because of the possibility that future events affecting them may differ significantly from those expected. We evaluated the key factors and assumptions used to develop any accounting estimates in determining that they were reasonable in relation to the financial statements taken as a whole.

The disclosures in the financial statements are neutral, consistent and clear. We noted no disclosures that were considered sensitive because of their significance to the financial statement users.

Difficulties Encountered in Performing the Audit

We encountered no significant difficulties in dealing with management in performing our audit.

Corrected and Uncorrected Misstatements

Professional standards require us to accumulate all known and likely misstatements identified during the audit, other than those that are trivial, and communicate them to the appropriate level of management. Management has corrected all such misstatements. In addition, none of the misstatements detected as a result of audit procedures and corrected by management were material, either individually or in the aggregate, to each opinion unit's financial statements taken as a whole.

Board of Directors
Humboldt County Association
of Governments
January 6, 2011

Disagreements with Management

For purposes of this letter, professional standards define a disagreement with management as a matter, whether or not resolved to our satisfaction, concerning a financial accounting, reporting, or auditing matter that could be significant to the financial statements or the auditor's report. We are pleased to report that no such disagreements arose during the course of our audit.

Management Consultations with Other Independent Accountants

In some cases, management may decide to consult with other accountants about auditing and accounting matters, similar to obtaining a "second opinion" on certain situations. If a consultation involves application of an accounting principle to the Humboldt County Association of Governments financial statements or a determination of the type of auditor's opinion that may be expressed on those statements, our professional standards require the consulting accountant to check with us to determine that the consultant has all the relevant facts. To our knowledge, there were no such consultations with other accountants.

Other Audit Findings or Issues

We generally discuss a variety of matters, including the application of accounting principles and auditing standards, with management each year prior to retention as the Humboldt County Association of Governments auditors. However, these discussions occurred in the normal course of our professional relationship and our responses were not a condition to our retention.

MANAGEMENT COMMENTS AND RECOMMENDATIONS

PRIOR YEAR RECOMMENDATIONS

Transportation Development Act Fund Eligibility

As part of our compliance testing of the various transit claimants, we reviewed eligibility for funds as calculated under Article 4, Section 6634(a) of the California Administrative Code. For certain prior fiscal years, the following claimants were determined to have received excess operational TDA funds:

	<u>6/30/08</u>	<u>6/30/09</u>
City of Arcata - Specialized Services	\$11,874	\$15,405
City of Eureka - General Services		\$ 51,801
City of Fortuna - Specialized Services	\$ 597	\$10,822

In accordance with the rules and regulations of the Transportation Planning Agency, these items are required to be adjusted on a succeeding year's TDA claim. They can also be re-identified as monies claimed for capital purchases if sufficient reserves have been used to help purchase new capital assets.

These necessary corrective actions for the year ended June 30, 2008 have been included in the claims filed by the cities for the year ended June 30, 2010. The amounts for the year ended June 30, 2009 remain open findings which should be addressed as part of the claims filed for the year ending June 30, 2011.

Contract Surplus/Recalculated Fund Eligibility - City of Eureka

As part of the current contract agreement between the City of Eureka and the Humboldt Transit Authority to operate the Eureka Transit System, any fund surplus or deficit from a current year is to be used to offset the scheduled contract costs for the following year. As a result of any such adjustments, it is necessary to recalculate the City's Fund Eligibility as calculated under Section 6634(a). This keeps each year's compliance calculations independent of any adjustments to the scheduled payments resulting from surplus or deficit amounts.

After recalculating the amounts for prior years, the City was determined to have received excess TDA funds as follows:

	<u>6/30/07</u>
City of Eureka - General Services	\$8,372

In accordance with the rules and regulations of the Transportation Planning Agency, these items are required to be adjusted on a succeeding year's TDA claim. They can also be re-identified as monies claimed for capital purchases if sufficient reserves have been used to help purchase new capital assets.

The required corrective actions for the above noted year remains to be adjusted on a subsequent year's claim. The required accounting adjustments were previously reflected in subsequent year's annual reconciliations between the two entities. For the year ended June 30, 2010, the required adjustment for that year's contract surplus or deficit had yet to be calculated and reconciled between the City and HTA.

PRIOR YEAR RECOMMENDATIONS - Continued

State Transit Assistance Funds Eligibility - City of Eureka

In order for STAF funds to be allocated for operating purposes, the operator must meet one of two efficiency standards based on operating costs relative to revenue vehicle hours. Essentially, the operating costs per revenue vehicle hour cannot exceed the previous year's amount (allowing for a CPI increase), or, alternatively, a three year average can be used to meet this requirement.

Due to increased costs of providing the specialized service program during the year ended June 30, 2001, the City was unable to meet either of these efficiency standards, and become ineligible to have received the \$7,452 in STAF funds for operating purposes. The City needed to either return the STAF funds, modify a future year's STAF claim for operating funds downward by the above excess, or file an amended claim for the June 30, 2001, year claiming the funds for capital purposes, and establish those funds as part of a capital reserve if they have not already spent unreserved funds for capital purposes.

The required amended claim was filed by the City in August 2009, and the matter is now deemed fully resolved.

City of Eureka and County of Humboldt Contract Review

Currently, the City of Eureka and the County of Humboldt have an agreement whereby the County contributes 27% of the net operating costs of the Eureka Transit System. This is intended to cover the areas served by the system that fall outside the Eureka city limits and in the County's jurisdiction. At the completion of each audit cycle, a reconciliation of budgeted costs to actual costs for the year is required, and any calculated excess or shortfall is adjusted into the next year's claim amount.

It has been many years since this original agreement was entered into by the City and County, and it is likely that circumstances and events have occurred which would make it beneficial for this agreement to be reviewed and modified, if necessary. Items such as the contribution percentage, requirements for periodic system performance reports, enforcement and compliance issues are just a few of the areas where changes may be considered. We recommended that the City and County begin the process of reviewing this agreement for any possible modifications.

This process, involving both City and County staff was initiated during the year ended June 30, 2010, and remains an ongoing project. In addition, the annual reconciliation between the City and County has remained uncalculated for several years. This potential adjustment for amounts due under the existing agreement compared to amounts actually paid during each year should be made as part of the current contract review and adjustment project.

STAF Programmed Funds

As part of a prior years' State Transit Assistance Fund program cycles, the City of Fortuna was programmed for funding. As of the time of our initial audit, the City had not yet filed the requisite claim with HCAOG in order to receive these approved funds.

We recommended that appropriate communications be made with the City in order for the proper and necessary paperwork to be filed in order to complete the earlier funding cycle. As of June 30, 2010, the City of Fortuna had yet to file for their approved funds in the amount of \$3,000 from the 2005-06 program year.

PRIOR YEAR RECOMMENDATIONS - Continued

Contracts with Transit Operators - City of Eureka

The City of Eureka claims certain transit funds under Section 99260.7 of the Public Utilities Code. This section requires that the City have signed contracts with any entity providing transportation services for the City. The City currently is receiving transit services for their Dial-A-Ride and Dial-A-Lift program from an outside provider. The latest signed contract for these services expired as of June 30, 2006. We recommended that the City obtain the appropriate contract agreement with their service provider, and the a new maximum contract amount be developed and conformed to.

As of the start of the current fiscal year, an updated contract agreement, effective July 1, 2009 was entered into between the City of Eureka and the transportation service provider.

Required Report to State Controller's Office

Section 6665 of the TDA Code requires expenditures of monies received for streets and road purposes under Section 99400(a) be reported to the State Controller's office in accordance with annually established deadlines.

For the years ended June 30, 2008 and 2009, the City of Trinidad did not meet this State filing deadline. Also, the Humboldt Community Access and Resource Center did not meet the deadline for the June 30, 2009. We recommend that future reports be filed by the appropriate statutory deadlines

The proper filing deadlines were met by these agencies for the year ended June 30, 2010.

RTPA Performance Audit Findings

During a recent performance audit, there were findings which related to some of the monitoring and reporting duties of the RTPA. These items are briefly noted as follows:

1. Certain of the required annual TDA fiscal and compliance audits were not completed timely;
2. Certain documentation relating to the actual completion and filing date of various claimant audit reports was unclear;
3. The Rules & Regulations developed by HCAOG, and last revised in 2001, need to be updated.

The outside audit firm, which was responsible for the late filed reports, has taken steps to ensure that future year's audit meet all required deadlines. In addition, we have modified and enhanced our internal process for both the delivery and documentation of the annual audits each year. All required deadlines (including extensions where appropriate) and report documentation requirements were met for the years ended June 30, 2009 and 2010.

As for the Rules & Regulations, we concurred with the finding and recommended that this set of claimant instructions for the annual TDA and STAF funding process be reviewed and updated or revised as deemed appropriate. This project is currently scheduled to be completed as part of the 2010-11 Overall Work Program.

PRIOR YEAR RECOMMENDATIONS - Continued

Prior Year PPM Funding Cycle

At the time of our prior year audit, the RTPA had not fully completed the project programming to the State for reimbursement under the Planning, Programming & Monitoring (PPM) revenue program for the fiscal year ended June 30, 2007. There was an approaching deadline which, if not met, would result in the relinquishment of certain potential revenues from that prior year's revenue pool.

We recommended that the RTPA make every effort to complete and submit the appropriate documentation in order to secure all possible program revenue dollars available under the PPM program for the previous fiscal year. During the year ended June 30, 2010, it was determined that essentially all available amounts were able to be documented, supported and submitted to Cal-Trans by the extended deadline of December 31, 2009. None of the unclaimed revenue related to HCAOG or the normal transit claimants.

Other Miscellaneous Recommendations

Several transit-related funds at the County were noted to still had small cash balances as of June 30, 2009. For the funds in question, there is apparently no further need to maintain these funds, as the activities previously accounted for through them are now accounted for in other funds.

We recommended that as part of the annual interest transfer to the Administrative Fund, that these small fund balances for funds 3834, 3835, 3836 and 3871 be transferred to the Administrative Fund as well.

During the year ended June 30, 2010, these transfers were made by the Auditor's office based upon written request from HCAOG personnel to process these transfers.

Fare Box Recovery Ratio - Humboldt Community Access and Resource Center (HCAR)

As part of our compliance testing of the various transit claimants, we review the farebox recovery ratio as calculated under Article 4, Section 6633.5 of the California Administrative Code. This requirement determines the required portion of the system operating costs which are recovered through the recorded transit fare revenues. For the Humboldt Community Access and Resource Center (HCAR), the required ratio is 10% as indicated in an earlier note. For the year ended June 30, 2009, HCAR did not meet its required Fare Box Recovery Ratio for Specialized Transit services. The ratio which was achieved was 8.1%, rather than the required 10%.

In accordance with Code Section 6633(a), this was considered the one time grace year, and no eligibility recalculations were required. For the year ended June 30, 2010, HCAR did meet their required farebox ratio.

PRIOR YEAR RECOMMENDATIONS - Continued

Required Amended Claims for 2008-09 State Transit Assistance Funds

In May, 2009, the Humboldt County Association of Governments (HCOAG), as the local Regional Transportation Planning Agency, adopted Resolution 08-16A (Amended), which authorized and allocated State Transit Assistance Funds to various claimants totaling \$365,394 for the 2008-09 cycle. This was an adjustment from the original authorization and allocation for the year, which had totaled \$240,578.

In order for the Court Auditor-Controller to approve and initiate payments relating to the increased level of STAF funding for the 2008-09 year, the various individual claimants will be required to file amended claims with HCAOG. These should be done as soon as possible in order to facilitate the payment of the balance of the 2008-09 funding cycle. The affected claimants and amounts are as indicated:

City of Arcata	\$ 2,954
City of Eureka	\$ (759)
City of Fortuna	\$ 121
Humboldt Transit Authority	\$ 2,500

It is our understanding that the City of Eureka's original claim was verbally amended with HCAOG personnel in July of 2009, and no formal revised claim is necessary. As of the year ended June 30, 2010, the other STAF claims have not yet been amended, and therefore the amounts remain unpaid.

CURRENT YEAR COMMENTS AND RECOMMENDATIONS

Transportation Development Act Fund Eligibility

As part of our compliance testing of the various transit claimants, we reviewed eligibility for funds as calculated under Article 4, Section 6634(a) of the California Administrative Code. For the year ended June 30, 2010, the following claimants were determined to have received excess operational TDA funds:

	<u>2010</u>
City of Arcata - Specialized Services	\$ 8,849
City of Arcata - General Services	\$ 204,847
City of Fortuna - Specialized Services	\$ 5,618

In accordance with the rules and regulations of the Transportation Planning Agency, these items are required to be adjusted on a succeeding year's TDA claim. They can also be re-identified as monies claimed for capital purchases if sufficient reserves have been used to help purchase new capital assets.

CURRENT YEAR COMMENTS AND RECOMMENDATIONS - Continued

Fare Box Recovery Ratio - City of Fortuna

As part of our compliance testing of the various transit claimants, we reviewed the farebox recovery ratio as calculated under Article 4, Section 6633.5 of the California Administrative Code. This requirement compares the portion of the system operating costs which are recovered through the recorded transit fare revenues. For the year ended June 30, 2010, the City of Fortuna did not meet its required Fare Box Recovery Ratio for Specialized Transit services. The ratio which was achieved was 9.51%, rather than the required 10%. The City had also failed to meet the required ratio for the year ended June 30, 2006, which was their one-time grace year.

In accordance with Code Section 6633(a), the year ended June 30, 2006 was considered the one time grace year, and no eligibility recalculations were required. However, as the City did not meet the required ratio for the year ended June 30, 2010, they now fall under the provisions of Section 6633.9 of the TDA Code (Non-compliance with Required Revenue Ratio). This will require the current year fare revenue shortfall of \$530 to be reduced from the City's fund eligibility for the 2011-12 TDA revenue cycle.

Administrative Findings and Recommendations

We noted various items and situations relating to the Humboldt County Association of Governments in its capacity as the Regional Transportation Planning Agency (RTPA). Those items are as noted in the following paragraphs:

1. SAFE Implementation Plan Update and Review

The Service Authority for Freeway Emergencies (SAFE) plan was originally developed based on the local county need for remote access to the public safety system. It was adopted in the early 1990's. Since that time, various aspects of the initial implementation plan have been brought into service. Additionally, over the years, significant surplus funds have been generated in this County fund. Given the length of time since the initial plan, and the large amount of unspent funds, it seems appropriate for HCAOG to consider an update of the SAFE plan as well as development of future spending goals in accordance with the plan's original intent.

2. RTPA Accounts at County-Auditor's Office; Records and Reports and Ongoing Accounting

In its capacity as the Regional Transportation Planning Agency (RTPA), HCAOG utilizes various County trust funds. The accounting of these funds are handled by the Auditor-Controller's office. Over the years, as HCAOG's involvement in the transportation planning process has increased, there has been a need to generate accounting information and reports which are better suited for the ongoing management of these funds.

Such activities currently include the periodic transfers between various funds to reimburse costs and to properly reflect activity in the correct fund; transfer interest earnings and other residual fund amounts between funds where needed; generation of more relevant and pertinent monthly or periodic reports and account details; and creation of systematic processes for the treatment of payments, receipts and other regular accounting activities of the RTPA.

Additionally, it would be useful for HCAOG to research certain reserve account balances that exist in several of the funds to determine any required potential activities, projects or fund transfers.

CURRENT YEAR COMMENTS AND RECOMMENDATIONS - Continued

Administrative Findings and Recommendations - Continued

3. Consideration of Oversight Requirements for Non-TDA Claimants

Under the current set of operating rules and regulations for HCAOG, there is no requirement for non-TDA claimants who are ultimate providers of TDA-funded services, to undergo audit, review or any form of outside system inspection. As long as the provider is under contract with the TDA claimant to provide such service, the TDA code is being met.

As part of the proposed Rules & Regulations update, HCAOG might consider the desirability that such contracts should include some type of such oversight process similar to what the TDA claimants themselves undergo each year, including any related funding mechanism.

4. Consideration of Guidelines for Allocation/Appportionment of Limited TDA Funds

Up to this point, limitations on available entity TDA funds have only impacted funds used for streets and roads - all transit related amounts have been met. However, given the continuing fiscal shortfalls and reductions the state of California is experiencing, it is likely only a matter of time before an entity claiming TDA funds for numerous transit-related activities experiences a situation where not enough TDA funds are available to cover all of their planned expenses.

As part of the proposed Rules & Regulations update, HCAOG should consider whether to create a model, or formula, to which entities would conform in the event of limited TDA funds during the year. This would likely entail a change in the current methodology of how the County funds certain transit expenditures for the various claimants.

The previous comments, observations and recommendation are meant to be constructive suggestions on ways to improve the procedures and policies of the entities named in the first paragraph of this letter. It is not intended to be all-inclusive of the areas where improvements might be achieved. Should you have any questions regarding these comments or any other matters, please contact us.

In conclusion, we would like to thank the personnel of the Humboldt County Association of Governments, the Humboldt County Auditor's staff, and the respective employees of the various claimants for their help and assistance during the course of our audit.

Very sincerely,

Anderson, Lucas, Somerville & Borges

ANDERSON, LUCAS, SOMERVILLE & BORGES, LLP

CITY OF EUREKA

REPORT ON AUDIT OF THE LOCAL TRANSPORTATION FUND

For the Year Ended June 30, 2010

CITY OF EUREKA

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ANDERSON, LUCAS, SOMERVILLE & BORGES, LLP

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INDEPENDENT AUDITORS' REPORT

Board of Directors
Humboldt County Association
of Governments
427 F Street, Suite 220
Eureka, CA 95501

We have audited the accompanying financial statements of the Transit Fund of the City of Eureka as of June 30, 2010 and 2009 and for the years then ended, as listed in the table of contents. These financial statements are the responsibility of the City's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provides a reasonable basis for our opinion.

As discussed in Note 1, the financial statements present only the Transit Fund and do not purport to, and do not, present fairly the financial position of the City of Eureka as of June 30, 2010 and 2009 and the changes in its financial position and cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the Transit Fund of the City of Eureka as of June 30, 2010 and 2009, and the changes in financial position and cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America.

Our audit was also made for the purpose of determining compliance with the Transportation Development Act Section 99260, the California Administrative Code and the rules and regulations of the Humboldt County Association of Governments. In our audit we performed, to the extent applicable, the tasks contained in Section 6667 of the California Administrative Code. Also, as part of our audit, and as disclosed in Note 13, we performed tests of compliance to determine whether certain state funds were received and expended in accordance with the applicable bond act and state accounting requirements.

In our opinion, except as discussed in Note 7, the funds described above were expended in conformance with the applicable laws, rules, and regulations of the Transportation Development Act and the allocation instructions of the Humboldt County Association of Governments.

Anderson, Lucas, Somerville & Borges

October 28, 2010
Fortuna, California

CITY OF EUREKA
TRANSIT FUND

STATEMENT OF NET ASSETS

Pertaining to Section 99260 of the Public Utilities Code

June 30, 2010 and 2009

	<u>2010</u>	<u>2009</u>
ASSETS		
<u>Current Assets</u>		
Cash	\$ 0	\$ 0
Ticket Inventory	7,342	4,262
Accounts Receivable	83,728	75,584
HTA Surplus	0	16,248
TDA Receivable	0	1,003,277
STAF Receivable	0	54,891
Prepaid Expenses	<u>88,008</u>	<u>0</u>
<u>Total Current Assets</u>	<u>179,078</u>	<u>1,154,262</u>
<u>Property, Plant and Equipment</u>		
Transportation Equipment	3,239,023	2,487,708
Less: Accumulated Depreciation	<u>(1,068,707)</u>	<u>(1,234,772)</u>
<u>Net Property, Plant and Equipment</u>	<u>2,170,316</u>	<u>1,252,936</u>
TOTAL ASSETS	<u>2,349,394</u>	<u>2,407,198</u>
LIABILITIES		
<u>Current Liabilities</u>		
Checks Drawn in Excess of Cash Balance	7,780	0
Accounts Payable and Other Accrued Expenses	123,852	42,393
Due to Other Funds	<u>0</u>	<u>801,375</u>
<u>Total Current Liabilities</u>	<u>131,632</u>	<u>843,768</u>
<u>Other Liabilities</u>		
Deferred Revenue (PTMISEA Program)	<u>0</u>	<u>112,509</u>
<u>Total Liabilities</u>	<u>131,632</u>	<u>956,277</u>
NET ASSETS		
Restricted	27,753	138,294
Unrestricted	<u>2,190,009</u>	<u>1,312,627</u>
<u>Total Net Assets</u>	<u>\$ 2,217,762</u>	<u>\$ 1,450,921</u>

The accompanying notes are an integral part of these financial statements.

**CITY OF EUREKA
TRANSIT FUND**

**STATEMENT OF REVENUES, EXPENSES AND
CHANGES IN FUND NET ASSETS
Pertaining to Section 99260 of the Public Utilities Code**

For the Year Ended June 30, 2010

With Comparative Amounts for the Year Ended June 30, 2009

	<u>2010</u>		Variance	2009
	<u>Budget</u>	<u>Actual</u>	<u>Favorable (Unfavorable)</u>	<u>Actual</u>
OPERATING REVENUES				
Passenger Fares	\$ 240,000	\$ 247,895	\$ 7,895	\$ 264,658
DAR/DAL Fares	120,200	80,775	(39,425)	102,689
Refunds and Advertising	2,000	3,874	1,874	4,099
<u>Total</u>	<u>362,200</u>	<u>332,544</u>	<u>(29,656)</u>	<u>371,446</u>
OPERATING EXPENSES				
Professional and Technical Services	774,374	774,374	0	759,722
DAR/DAL Services/Expenses	485,465	473,480	11,985	501,602
Cost Allocation	8,127	8,127	0	17,763
Operating Supplies/Printing	4,000	5,261	(1,261)	6,562
Repairs and Maintenance	36,000	5,482	30,518	1,589
Other	695	535	160	376
Depreciation	0	261,401	(261,401)	172,800
Insurance	34,000	27,077	6,923	31,998
<u>Total</u>	<u>1,342,661</u>	<u>1,555,737</u>	<u>(213,076)</u>	<u>1,492,412</u>
<u>Operating Loss</u>	<u>(980,461)</u>	<u>(1,223,193)</u>	<u>(242,732)</u>	<u>(1,120,966)</u>
NON-OPERATING REVENUES				
Operating Grant - LTF	268,590	197,215	(71,375)	442,788
Capital Grants-LTF	0	75,395	75,395	0
Operating Subsidy - County	308,577	308,577	0	309,000
Capital Grants - STAF	110,000	759	(109,241)	110,541
TDA Allocation - RTS	265,724	265,725	1	257,984
TDA Allocation - DAR	256,109	255,558	(551)	222,505
Capital Grants	1,246,509	955,754	(290,755)	0
Operating Grant - ARRA	150,000	95,672	(54,328)	0
Operating Assistance	64,059	0	(64,059)	0
Interest Income	0	1,103	1,103	0
<u>Total</u>	<u>2,669,568</u>	<u>2,155,758</u>	<u>(513,810)</u>	<u>1,342,818</u>
NON-OPERATING EXPENSES				
HTA Assessment - RTS	265,724	265,724	0	257,984
GASB 31 Change in FMV	0	0	0	0
<u>Total</u>	<u>265,724</u>	<u>265,724</u>	<u>0</u>	<u>257,984</u>
NET INCREASE (DECREASE) IN NET ASSETS	\$ <u>1,423,383</u>	\$ <u>666,841</u>	\$ <u>(756,542)</u>	\$ <u>(36,132)</u>

The accompanying notes are an integral part of these financial statements.

CITY OF EUREKA
TRANSIT FUND

STATEMENT OF REVENUES, EXPENSES AND
CHANGES IN FUND NET ASSETS
Pertaining to Section 99260 of the Public Utilities Code

For the Year Ended June 30, 2010

With Comparative Amounts for the Year Ended June 30, 2009

	<u>2010</u>		<u>Variance</u>	<u>2009</u>
	<u>Budget</u>	<u>2010 Actual</u>	<u>Favorable (Unfavorable)</u>	<u>Actual</u>
NET INCREASE (DECREASE) IN NET ASSETS				
Balance forward	\$1,423,383	\$ 666,841	\$ (756,542)	\$ (36,132)
NET ASSETS - BEGINNING OF YEAR	1,450,921	1,450,921	0	1,507,281
Prior Period Adjustments	<u>0</u>	<u>100,000</u>	<u>100,000</u>	<u>(20,228)</u>
NET ASSETS - END OF YEAR	<u>\$2,874,304</u>	<u>\$2,217,762</u>	<u>\$ (656,542)</u>	<u>\$ 1,450,921</u>

The accompanying notes are an integral part of these financial statements.

**CITY OF EUREKA
TRANSIT FUND**

STATEMENT OF CASH FLOWS

For the Years Ended June 30, 2010 and 2009

	<u>2010</u>	<u>2009</u>
CASH FLOWS FROM OPERATING ACTIVITIES		
Cash Received for Services	\$ 368,733	\$ 348,732
Cash Disbursed for Operating Activities	<u>(1,296,185)</u>	<u>(1,348,063)</u>
NET CASH USED BY OPERATING ACTIVITIES	<u>(927,452)</u>	<u>(999,331)</u>
CASH FLOWS FROM NONCAPITAL FINANCING ACTIVITIES		
Cash Received from Other Governments	2,046,600	229,000
Operating Grants Received	51,339	0
Cash Paid for Non-operating Expenses	(265,724)	(257,984)
Interest Received	<u>1,103</u>	<u>0</u>
NET CASH PROVIDED (USED) BY NONCAPITAL FINANCING ACTIVITIES	<u>1,833,318</u>	<u>(28,984)</u>
CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES		
Capital Grants Received	1,074,290	232,024
Purchase of Property and Equipment	(1,178,781)	(5,084)
Cash Received from Other Funds	0	801,375
Cash Paid to Other Funds	<u>(801,375)</u>	<u>0</u>
NET CASH PROVIDED (USED) BY CAPITAL AND RELATED FINANCING ACTIVITIES	<u>(905,866)</u>	<u>1,028,315</u>
CASH FLOWS FROM INVESTING ACTIVITIES		
NET CASH PROVIDED BY INVESTING ACTIVITIES	<u>0</u>	<u>0</u>
NET INCREASE IN CASH	0	0
CASH - BEGINNING OF YEAR	<u>0</u>	<u>0</u>
CASH - END OF YEAR	<u>\$ 0</u>	<u>\$ 0</u>

The accompanying notes are an integral part of these financial statements.

**CITY OF EUREKA
TRANSIT FUND**

NOTES TO FINANCIAL STATEMENTS

For the Year Ended June 30, 2010

NOTE 1 - REPORTING ENTITY

These financial statements consist only of the Transit Fund of the City of Eureka. This Enterprise Fund accounts for the various transit activities provided by the City, and is financed with Transportation Development Act, State Transit Assistance Fund, and various other Federal transportation monies.

NOTE 2 - BASIS OF ACCOUNTING

The Transit Fund is accounted for as an enterprise fund using the accrual basis of accounting and is otherwise in compliance with the uniform system of accounts and records adopted by the State Controller.

NOTE 3 - DESCRIPTION OF TRANSIT SYSTEM

The Eureka Transit System (ETS) is a fixed route public transportation system serving the Eureka community and adjoining unincorporated areas within the County. ETS is controlled and owned by the City of Eureka which contracts with the Humboldt Transit Authority to provide managerial and operational services. The city provides for door-to-door transportation service for the elderly and handicapped through contracts with the Humboldt Senior Resource Center and City Cab. The City also contributes funds for the operation of the Redwood Transit System, a regional system operated by the Humboldt Transit Authority for general public use.

NOTE 4 - STATEMENT OF CASH FLOWS

To comply with GASB Statement 9, Cash Flows Statement, the following reconciliation of loss from operations to net cash used by operating activities is presented:

	<u>2010</u>	<u>2009</u>
Loss from operations	\$ (1,223,193)	\$ (1,120,966)
Add (deduct):		
Depreciation	261,401	172,800
Change in operating receivables, inventories and prepaid expenses	(54,899)	(22,714)
Change in accounts payable and accrued expenses	<u>89,239</u>	<u>(28,451)</u>
Net cash used by operating activities	\$ <u>(927,452)</u>	\$ <u>(999,331)</u>

NOTE 5 - ACCRUED VACATION AND SICK LEAVE

The City of Eureka does not accrue sick leave. Since this form of compensated absence does not meet all four requirements of GASB 16 for mandatory accrual, it is only necessary to be disclosed in the footnotes.

	<u>2010</u>	<u>2009</u>
Accrued vacation and holiday	\$ 0	\$ 0
Accrued sick leave	<u>0</u>	<u>0</u>
	\$ <u>0</u>	\$ <u>0</u>

**CITY OF EUREKA
TRANSIT FUND**

NOTES TO FINANCIAL STATEMENTS

For the Year Ended June 30, 2010

NOTE 6 - FARE BOX RECOVERY RATIO

The City met its required Fare Box Recovery Ratio for general and specialized transit services as calculated under Sections 6633.2 and 6633.5 of the TDA code for the year ended June 30, 2010, as well as the year ended June 30, 2009 (as restated.) The calculation of this compliance was as follows:

	<u>General Services</u>	
	<u>2010</u>	(As Restated) <u>2009</u>
Total operating costs	\$ 820,856	\$ 818,010
Less: Insurance premiums per Section 99268.17	<u>0</u>	<u>0</u>
Net operating costs	<u>\$ 820,856</u>	<u>\$ 818,010</u>
Required fare box recovery ratio %	22.4%	22.4%
Required minimum fares	<u>\$ 183,872</u>	<u>\$ 183,234</u>
Actual fares collected	\$ 245,395	\$ 264,658
Reclassify year-end fares	<u>0</u>	<u>0</u>
Adjusted fares collected	<u>\$ 245,395</u>	<u>\$ 264,658</u>
Actual fare box recovery ratio % achieved	29.9%	32.4%

	<u>Specialized Services</u>	
	<u>2010</u>	<u>2009</u>
Total operating costs	\$ 473,480	\$ 501,602
Less: Insurance premiums per Section 99268.17	<u>0</u>	<u>0</u>
Net operating costs	<u>\$ 473,480</u>	<u>\$ 501,602</u>
Required fare box recovery ratio %	10%	10%
Required minimum fares	\$ 47,348	\$ 50,160
Actual fares collected	\$ 80,775	\$ 102,690
Actual fare box recovery ratio % achieved	17.1%	20.5%

CITY OF EUREKA
TRANSIT FUND

NOTES TO FINANCIAL STATEMENTS

For the Year Ended June 30, 2010

NOTE 7 - FUND ELIGIBILITY

Pursuant to Section 6634 of the California Administrative Code, a transit claimant is eligible to receive monies from the Local Transportation Fund in an amount which does not exceed the claimant's operating costs, less actual fare revenues received. For the fiscal years ended June 30, 2010 and June 30, 2009 (as restated), the City of Eureka received excess Transportation Development Act funds, identified and calculated, if applicable, as follows:

	<u>General Services</u>	
		(As Restated)
	<u>2010</u>	<u>2009</u>
Operating costs	\$ 820,856	\$ 818,010
Less: Fare revenues	(245,395)	(264,658)
Federal operating assistance	(95,672)	(0)
County operating subsidy	(195,795)	(162,365)
Maximum fund eligibility	283,994	390,987
TDA funds received	<u>197,215</u>	<u>442,788</u>
Excess funds received	<u>\$ 0</u>	<u>\$ 51,801</u>

	<u>Specialized Services</u>	
	<u>2010</u>	<u>2009</u>
Operating costs	\$ 473,480	\$ 501,602
Less: Fare revenues	(80,775)	(102,690)
County operating subsidy	(112,782)	(146,635)
Maximum fund eligibility	279,923	252,277
TDA funds received	<u>255,558</u>	<u>222,505</u>
Excess funds received	<u>\$ 0</u>	<u>\$ 0</u>

In accordance with existing HCAOG guidelines, any excess should be adjusted on a succeeding year's TDA claim. It can be re-identified as monies claimed for capital purposes if sufficient TDA reserves have been used to help purchase new capital assets.

NOTE 8 - USE OF ESTIMATES

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reported period. Actual results could differ from those estimates.

**CITY OF EUREKA
TRANSIT FUND**

NOTES TO FINANCIAL STATEMENTS

For the Year Ended June 30, 2010

NOTE 9 - HUMBOLDT TRANSIT AUTHORITY CONTRACT SURPLUS

The City's contract with the Humboldt Transit Authority (HTA) to operate the Eureka Transit System contains a provision that allows any surplus generated by HTA to be used to reduce a subsequent year's contract costs.

During the year ended June 30, 2009, a prior period adjustment in the amounts of \$(20,228) was made in order to record the cumulative surplus (deficit) up through June 30, 2008. (See Note 10)

During the year ended June 30, 2009, the cumulative operating contract surplus through June 30, 2008 was refunded to the City. In addition, the calculated contract surplus for the year ended June 30, 2009 was recorded as a receivable and operating cost adjustment as of June 30, 2009.

At June 30, 2009, the surplus as of the year ended June 30, 2009 is shown as a receivable from HTA, as noted above. The corresponding prior period adjustments have also been recorded on the Statement of Revenues, Expenses and Changes in Retained Earnings for the affected years. The adjustment for the year ended June 30, 2010 had yet to be made at the time of our audit.

NOTE 10 - PRIOR PERIOD ADJUSTMENTS

The following prior period adjustments were required to be made during the years ended June 30, 2010 and 2009:

	<u>2010</u>	<u>2009</u>
Record TDA capital funds transfer from HTA (Murray Method)	\$ 100,000	\$ 0
Record HTA surplus (deficit) for prior year (Note 9)	<u>0</u>	<u>(20,228)</u>
Total Prior Period Adjustments	<u>\$ 100,000</u>	<u>\$ (20,228)</u>

NOTE 11 - TRANSIT OPERATOR VEHICLE CODE COMPLIANCE

Section 99251 of the Transportation Development Act requires operators submitting claims for TDA funds to provide evidence of compliance with Section 1808.1 of the Vehicle Code, regarding participation in the Department of Motor Vehicles Pull Notice Program. Such compliance is generally provided by the routine inspections performed by the California Highway Patrol on transit operator vehicles.

The City currently participates in the Pull Notice Program and is otherwise deemed compliant in this area.

CITY OF EUREKA
TRANSIT FUND

NOTES TO FINANCIAL STATEMENTS

For the Year Ended June 30, 2010

NOTE 12 - REQUIRED AMENDED CLAIM FOR 2009-09 STAF ALLOCATION

In May, 2009, the Humboldt County Association of Governments (HCOAG), as the local Regional Transportation Planning Agency, adopted Resolution 08-16A (Amended), which authorized and allocated State Transit Assistance Funds to various claimants totaling \$365,394 for the 2008-09 cycle. This was an adjustment from the original authorization and allocation for the year, which had totaled \$240,578.

In order for the Court Auditor-Controller to approve and initiate payments relating to the increased level of STAF funding for the 2008-09 year, the various individual claimants will be required to file amended claims with HCOAG. These should be done as soon as possible in order to facilitate the payment of the balance of the 2008-09 funding cycle.

It is our understanding that the City's original claim was verbally amended with HCOAG personnel in July of 2009, and no formal revised claim is necessary.

NOTE 13 - GRANT REVENUES:

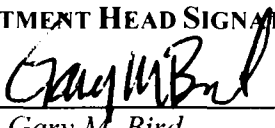

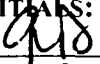
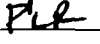
PTMISEA

In November 2006, California voters passed a bond measure enacting the Highway Safety, Traffic Reduction, Air Quality and Port Security Bond Act of 2006. Of the \$19.925 billion of state general obligation bonds authorized, \$4 billion was set aside by the State as instructed by statute as the Public Transportation Modernization Improvement and Service Enhancement Account (PTMISEA). These funds are available to the California Department of Transportation for intercity rail projects and to transit operators in California for rehabilitation, safety or modernization improvements, capital service enhancements or expansions, new capital projects, bus rapid transit improvements or for rolling stock procurement, rehabilitation or replacement.

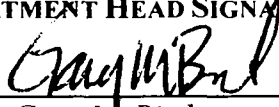
During the fiscal year ended June 30, 2008, the City, through the administrative workings of the Humboldt County Association of Governments (HCOAG), applied for and received proceeds of \$112,509 from the State's PTMISEA account for the procurement of new rolling stock vehicles and the rehabilitation of existing vehicles. As of June 30, 2009, no qualifying expenditures were incurred and the entire proceeds of \$112,509 was deferred. During the year ended June 30, 2010, qualified expenditures for new bus acquisitions were made by the City as follows:

Proceeds received:	
PMISEA	\$ 112,509
Expenditures incurred:	
Bus rolling stock	<u>(112,509)</u>
Unexpended proceeds at June 30, 2010	\$ <u>0</u>


AGENDA SUMMARY

RE: REQUEST FOR EXCEPTION TO THE HIRING FREEZE	FOR AGENDA DATE: APRIL 19, 2011 AGENDA ITEM No.: 10	
RECOMMENDATION: 1. Approve an exception to the hiring freeze for a Senior Personnel Analyst position.		
SUMMARY: With the adoption of the FY 03/04 budget, the City Council authorized a hiring freeze for all non-public safety positions. Any exceptions to the hiring freeze must be approved by the Council. Due to a pending resignation on April 25, 2011, the Personnel Department requests authorization to fill the position of Senior Personnel Analyst. This position is already included in the FY 10/11 budget and is paid out of the <u>Internal Operations Fund</u> . This position provides a wide variety of professional personnel services and critical functions in support of the City's Personnel Department. The employee in this position provides direct assistance to the Personnel Director, and manages or participates in the daily activities of the Personnel Department; including recruitment and selection, testing, workers' compensation cases, benefit administration, labor relations, and employee safety and development. The Personnel Department requests Council determine whether to exempt this position from the hiring freeze and authorize it to be filled.		
FISCAL IMPACT: The cost of filling this position is \$87,016 annually, fully benefitted and based on a Step 3 salary rate from the <u>Internal Operations Fund</u> . This position is already included in the FY 10/11 budget.		
DEPARTMENT HEAD SIGNATURE: <div style="text-align: center;">  _____ Gary M. Bird Personnel Director </div>	CITY MANAGER SIGNATURE: <div style="text-align: center;">  _____ David W. Tyson City Manager </div>	
REVIEWED BY: Personnel Finance	DATE: <div style="text-align: center;"> <u>4.12.11</u> <u>4.12.11</u> </div>	INITIALS: <div style="text-align: center;">  _____  _____ </div>
Council Action: <div style="display: flex; justify-content: space-between;"> Ordinance No. _____ Resolution No. _____ </div>		


AGENDA SUMMARY

RE: REQUEST FOR EXCEPTION TO THE HIRING FREEZE	FOR AGENDA DATE: APRIL 19, 2011 AGENDA ITEM NO.:	
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DEPARTMENT HEAD SIGNATURE:  _____ Gary M. Bird Personnel Director	CITY MANAGER SIGNATURE: _____ David W. Tyson City Manager	
REVIEWED BY: Personnel _____ Finance _____	DATE: _____ _____	INITIALS: _____ _____
Council Action: Ordinance No. _____ Resolution No. _____		

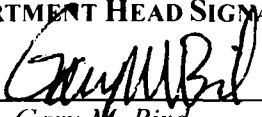

EUREKA CITY COUNCIL
AGENDA SUMMARY

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REVIEWED BY: Personnel Finance	DATE: _____ _____	INITIALS: _____ _____
Council Action: Ordinance No. _____ Resolution No. _____		

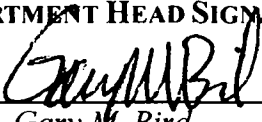
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DEPARTMENT HEAD SIGNATURE:  _____ Gary M. Bird Personnel Director	CITY MANAGER SIGNATURE: _____ David W. Tyson City Manager	
REVIEWED BY: Personnel _____ Finance _____	DATE: _____ _____	INITIALS: _____ _____
Council Action: Ordinance No. _____ Resolution No. _____		

EUREKA CITY COUNCIL
AGENDA SUMMARY

RE: REQUEST FOR EXCEPTION TO THE HIRING FREEZE	FOR AGENDA DATE: APRIL 19, 2011 AGENDA ITEM NO.: 11	
RECOMMENDATION: 1. Approve an exception to the hiring freeze for a Maintenance Worker I/II position.		
SUMMARY: With the adoption of the FY 03/04 budget, the City Council authorized a hiring freeze for all non-public safety positions. Any exceptions to the hiring freeze must be approved by the Council. Due to a recent resignation, the Public Works Department requests authorization to fill the position of Maintenance Worker I/II, which is already included in the FY10/11 budget, and is paid out of the Wastewater Collections Funds (not the general Fund). This position is necessary in that it operates and maintains the city's 125 miles of wastewater collection facilities, and 17 lift stations. This position is critical to the continuous operation of the collection system, to maintain constant flows, and to prevent and repair sanitary sewer overflows. The Public Works Department requests Council determine whether to exempt this position from the hiring freeze and authorize it to be filled.		
FISCAL IMPACT: The cost of filling this position at Maintenance Worker I Step 3 salary rate is \$50,513 annually. The cost of filling this position at Maintenance Worker II Step 3 salary rate is \$54,511 annually. This position is already included in the FY10/11 budget, and is <u>paid from the Wastewater Collections Funds, not the General Fund.</u>		
DEPARTMENT HEAD SIGNATURE:  _____ Gary M. Bird Personnel Director	CITY MANAGER SIGNATURE:  _____ David W. Tyson City Manager	
REVIEWED BY: Public Works Finance	DATE: 4-12-11	INITIALS: PLP
Council Action: Ordinance No. _____ Resolution No. _____		

AGENDA SUMMARY

RE: REQUEST FOR EXCEPTION TO THE HIRING FREEZE	FOR AGENDA DATE: APRIL 19, 2011 AGENDA ITEM No.:	
RECOMMENDATION: 1. Approve an exception to the hiring freeze for a Maintenance Worker I/II position.		
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DEPARTMENT HEAD SIGNATURE:  _____ Gary M. Bird Personnel Director	CITY MANAGER SIGNATURE: _____ David W. Tyson City Manager	
REVIEWED BY: Public Works Finance	DATE: _____ _____	INITIALS: _____ _____
Council Action: Ordinance No. _____ Resolution No. _____		

AGENDA SUMMARY**RE: REQUEST FOR EXCEPTION
TO THE HIRING FREEZE****FOR AGENDA DATE: APRIL 19, 2011****AGENDA ITEM NO.:****RECOMMENDATION:**

1. Approve an exception to the hiring freeze for a Maintenance Worker I/II position.

SUMMARY:

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Due to a recent resignation, the Public Works Department requests authorization to fill the position of Maintenance Worker I/II, which is already included in the FY10/11 budget, and is paid out of the Wastewater Collections Funds (not the general Fund).

This position is necessary in that it operates and maintains the city's 125 miles of wastewater collection facilities, and 17 lift stations. This position is critical to the continuous operation of the collection system, to maintain constant flows, and to prevent and repair sanitary sewer overflows.

The Public Works Department requests Council determine whether to exempt this position from the hiring freeze and authorize it to be filled.

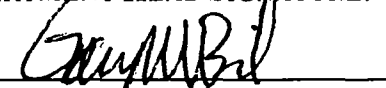
FISCAL IMPACT:

The cost of filling this position at Maintenance Worker I Step 3 salary rate is \$50,513 annually.

The cost of filling this position at Maintenance Worker II Step 3 salary rate is \$54,511 annually.

This position is already included in the FY10/11 budget, and is paid from the Wastewater Collections Funds, not the General Fund.

DEPARTMENT HEAD SIGNATURE:**CITY MANAGER SIGNATURE:**


 Gary M. Bird
 Personnel Director

 David W. Tyson
 City Manager

REVIEWED BY:**DATE:****INITIALS:**

Public Works

Finance

_____**Council Action:**

Ordinance No. _____

Resolution No. _____

AGENDA SUMMARY

**RE: IMPLEMENT SERVICE ALTERNATIVE
APPROVED IN 2010/11 BUDGET**

FOR AGENDA DATE: APRIL 19, 2011

AGENDA ITEM NO.:

12

RECOMMENDATION:

Implement the Finance Department's Service Alternative (Information Technology Staff Upgrade) approved by the City Council in the 2010/11 adopted budget as follows:

1. Reclassify the currently allocated Information Services Analyst II position to Senior Information Services Analyst, adopt the job specification for Senior Information Services Analyst per the 2006 Koff Class/Compensation Study and establish an M24 salary grade for the position consistent with the position's essential job functions.
2. Adopt updated Koff Study job specification for Information Services Manager and establish an M27 salary grade for the position consistent with the position's essential job functions.

SUMMARY:

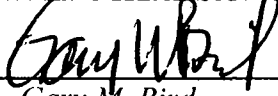
The Information Technology Division serves a highly critical function within the City of Eureka. The Division manages the integrity of our computers, network drive systems and information assets, and upgrades critical security measures as changes in the information technology industry dictate. The Division provides city-wide support for all office automation equipment including computers, telephones, fax machines, copiers and other equipment. The division currently has 2 full time positions to manage these systems, and there is currently one vacancy.

As part of the adopted 2010/11 budget, the City Council approved a Service Alternative in the Finance Department's Information Technology Division which would allow the Division to refill a vacant position (due to resignation) with someone with the network management skill set required for the position. The upgrade will ensure the City continues to be provided with a stable progressive computer network to assist Departments in obtaining maximum productivity, and ensure continued high quality public and customer services.

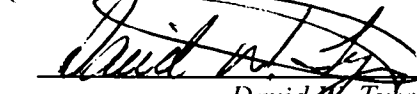
(continued)

FISCAL IMPACT:

The cost of implementing this service alternative, as approved in the 2010/11 budget, is \$43,468 which will be paid from the Information Technology Operations Fund. This cost represents salary and full benefits for both upgraded positions in the Finance Department.

DEPARTMENT HEAD SIGNATURE:


Gary M. Bird
Personnel Director

CITY MANAGER SIGNATURE:


David W. Tyson
City Manager

REVIEWED BY:

Personnel
Finance

DATE:

4.12.11

4.13.11

INITIALS:

GMB

PLR

Council Action:

Ordinance No. _____

Resolution No. _____

SUMMARY *(continued)*

Classification

Both the Information Services Manager and Senior Information Services Analyst positions are grouped in the Unrepresented Management/Mid-Management/Confidential classification.

Salary schedule for Information Services Manager

As approved by the City Council in the 2010/11 Service Alternative, the salary schedule of the Information Services Manager position will fall under the M27 job classification. This classification also includes the Principal Planner position. The salary range for this job classification is as follows:

Job Class: M27

Principal Planner

Information Services Manager

	<u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>	<u>Step 4</u>	<u>Step 5</u>
Annual	\$60,636	\$63,672	\$66,864	\$70,212	\$73,728
Monthly	\$5,053	\$5,306	\$5,572	\$5,851	\$6,144

Salary schedule for Senior Information Services Analyst

As approved by the City Council in the 2010/11 Service Alternative, the salary schedule of the Senior Information Services Analyst position will fall under the M24 job classification. This classification also includes the Zoo Manager position. The salary range for this job classification is as follows:

Job Class: M24

Zoo Manager

Senior Information Services Analyst

	<u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>	<u>Step 4</u>	<u>Step 5</u>
Annual	\$52,356	\$54,984	\$57,744	\$60,636	\$63,672
Monthly	\$4,363	\$4,582	\$4,812	\$5,053	\$5,306

Attachments

1. Finance Department Service Alternative (2010-11)
2. Job Specification: Information Services Manager
3. Job Specification: Senior Information Services Analyst

**Finance Department
Information Technology Fund
FY 2010-11**

**Service Alternative
IT Staff Upgrade**

Currently there are 3 positions within the Information Services job functions:

Information Services Analyst I/II	M18/M20
Senior Information Services Analyst	M21
Information Services Manager	M23

The incumbent in the Information Services Analyst II position has informed me she plans to move out of the area in late summer 2010. While she is currently being paid in the Information Services Analyst II position, she is actually doing the work of the Senior Information Services Analyst, a classification which was recommended in the Koff Classification & compensation Study. During the FY 09-10 budget the Senior Information Services Analyst position was approved to be implemented at salary range M21, which is much lower in the salary ranges than recommended by the Koff Study. The Senior Information Services Analyst position could not be placed any higher because of compaction with the supervisory position of Information Services Manager.

In order to refill the current position with someone with the network management skill set required for this position, it will be necessary to raise this salary before recruiting for the position.

If a vacancy does occur, this service alternative would move the Senior Information Services Analyst position to salary range M24, which is more in line with the placement recommendation from the Koff Study, but still not where the position should eventually end up. Because this adjustment would place the Senior Information Services Analyst at a higher salary range than the supervisory position, Information Services Manager, this option would recommend reclassifying the Information Services Manager to the Chief Technology Officer and place this position at salary range M27.

Placement for Information Services position reclassifications

Information Services Manager to Chief Technology Officer

In the Appendix of the Koff Study which was used to calculate all position increases, the Informations Services Manager position was proposed to be placed in the same salary range as these positions (Step 5 being 7,615)

	Current Step 5
Deputy Public Works Director	6775
Police Lieutenant	7002

As this seems to be a mighty big jump and too close to the Finance Director salary, I used a 15% increase above the Senior Information Services Analyst position which placed the Chief Technology Officer position at 6,144

Information Services Analyst II to Senior Information Services Analyst

In the Appendix of the Koff Study which was used to calculate all position increases, the Senior Information Services Analyst position was proposed to be placed in the same salary range as these positions (Step 5 being 6,265)

	Current Step 5
Associate Civil Engineer	6452
Parks & Maintenance Manager	5572
Project Manager	5572
PW Operations Manager	5053
Recreation & Facilities Manager	5053
Zoo Manager	5306

Since the Associate Civil Engineer position is already paid more than the proposed salary range in the Koff study, that salary was eliminated from my placement calculation. I took the difference between the current highest salary and the current lowest salary (5,572-5,053=519) divided that number in half (260) and added that number to the current lowest salary (260+5,053=5,313) then found the closest current salary to that number, which would be 5,306

SERVICE ALTERNATIVE SUMMARY

ACCOUNT #	NAME	AMOUNT REQUESTED
PERSONAL SERVICES		
630-41435-1110	Salaries & Wages	35,892
630-41435-1114	Vacation BuyBack	994
630-41435-1302	PERS	6,192
630-41435-1305	Medicare	221
630-41435-1313	Work Comp	169
	SUBTOTAL	43,468
MATERIALS & SERVICES		
	SUBTOTAL	
CAPITAL OUTLAY		
	SUBTOTAL	0
	GRAND TOTAL	43,468

DEPARTMENT: Finance
 PROGRAM: Information Technology
 SERVICE ALTERNATIVE TITLE: Division Manager and Senior Information Services Analyst Reclassifications

DATE GIVEN TO PERSONNEL: _____

November 2006/2010

**FLSA: EXEMPT
INFORMATION SERVICES MANAGER**

DEFINITION

Under general direction, plans, organizes, oversees, coordinates and reviews the work of staff performing difficult and complex professional, technical and office support related to all programs and activities of the Information Services Division; administers current and long-range planning activities; manages the effective use of the City's information services resources to improve organizational productivity and customer service; provides highly complex and responsible support to the Director of Finance in areas of expertise; and performs related work as required.

SUPERVISION RECEIVED AND EXERCISED

Receives general direction from the Director of Finance. Exercises direct and general supervision over information and central services staff.

CLASS CHARACTERISTICS

This is a mid-management classification that manages City information services activities, including development of user requirements, needs analysis, project scope, and the administration and operation of computer equipment. Responsibilities include performing diverse, specialized, and complex work involving significant accountability and decision-making responsibility. The incumbent organizes and oversees day-to-day activities and is responsible for providing professional-level support to the Director in a variety of areas. Successful performance of the work requires an extensive professional background as well as skill in coordinating departmental work. This class is distinguished from the Director of Finance in that the latter has overall responsibility for all functions of the Department and for developing, implementing and interpreting public policy.

EXAMPLES OF ESSENTIAL JOB FUNCTIONS (Illustrative Only)

Management reserves the right to add, modify, change or rescind the work assignments of different positions and to make reasonable accommodations so that qualified employees can perform the essential functions of the job.

- ① Manages and participates in the development and implementation of goals, objectives, policies and priorities for the Division; recommends within departmental policy, appropriate service and staffing levels; recommends and administers policies and procedures.
- ① Plans, manages, and oversees the daily functions, operations, and activities of the Information Services Division, including development of user requirements, needs analysis, project scope, and the administration and operation of computer and other information services equipment.
- ① Develops and standardizes procedures and methods to improve the efficiency and effectiveness of information services programs; continuously monitors and evaluates the efficiency and effectiveness of service delivery methods and procedures; assesses and monitors workload, administrative and support systems, and internal reporting relationships; identifies opportunities for improvement and recommends to the Director.
- ① Manages and coordinates the work plan for the assigned Division; meets with staff to identify and resolve problems; assigns work activities, projects and programs; monitors work flow; reviews and evaluates work products, methods and procedures.
- ① Participates in the selection, trains, motivates, and evaluates assigned personnel; provides or coordinates staff training; works with employees to correct deficiencies; implements discipline and termination procedures.
- ① Prioritizes and allocates available resources; reviews and evaluates service delivery, makes recommendations for improvement and ensures maximum effective service provision.

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- ⌚ Develops and reviews staff reports related to information services activities and services; presents reports to the City Council and other commissions, committees and boards.
- ⌚ Manages and participates in the development and administration of the Information Services Division budget; oversees the budget for the Division.
- ⌚ Provides highly complex staff assistance to the Director of Finance; prepares and presents staff reports and other necessary correspondence.
- ⌚ Conducts a variety of organizational studies, investigations, and operational studies; recommends modifications to information services programs, policies, and procedures, as appropriate.
- ⌚ Implements adopted information services plans, policies and standards.
- ⌚ Attends and participates in professional group meetings; stays abreast of new trends and innovations in the field of information technology; researches emerging products and enhancements and their applicability to City needs.
- ⌚ Monitors changes in regulations and technology that may affect operations; implements policy and procedural changes after approval.
- ⌚ Receives, investigates, and responds to problems and complaints in a professional manner; identifies and reports findings and takes necessary corrective action.
- ⌚ Manages and executes special projects, such as technology upgrades for facilities that are being remodeled, etc.
- ⌚ Performs other duties as assigned.

QUALIFICATIONS

Knowledge of:

- ⌚ Administrative principles and practices, including goal setting, program development, implementation and evaluation, project management, and supervision of staff, either directly or through subordinate levels of supervision.
- ⌚ Principles and practices of budget administration.
- ⌚ Principles and practices of employee supervision, including work planning, assignment, review and evaluation and the training of staff in work procedures.
- ⌚ Hardware and software characteristics of various computer systems and a general understanding of system features and their integration capabilities.
- ⌚ Systems design and development process, including requirements analysis, feasibility studies, software design, programming, beta testing, installation, evaluation, and operational management.
- ⌚ Current print shop and mailroom trends in local public agencies.
- ⌚ Operational characteristics of print shop and mailroom equipment and systems.
- ⌚ Applicable Federal, State, and local laws, codes and regulations concerning the operation of the Information Services Division.
- ⌚ Principles and practices of contract administration and evaluation.
- ⌚ Organization and management practices as applied to the development, analysis and evaluation of programs, policies and operational needs of the assigned Division.
- ⌚ General principles of risk management related to the functions of the assigned area.
- ⌚ Recent and on-going developments, current literature, and sources of information related to the operations of Information Services Division.
- ⌚ Record keeping principles and procedures.
- ⌚ Modern office practices, methods and computer equipment.
- ⌚ Computer applications related to the work.
- ⌚ English usage, grammar, spelling, vocabulary, and punctuation.
- ⌚ Techniques for dealing effectively with the public, vendors, contractors and City staff, in person and over the telephone.

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- ⌚ Techniques for effectively representing the City in contacts with governmental agencies, community groups and various business, professional, educational, regulatory and legislative organizations.
- ⌚ Techniques for providing a high level of customer service to public and City staff, in person and over the telephone.

Ability to:

- ⌚ Recommend and implement goals, objectives, and practices for providing effective and efficient information technology and central services.
- ⌚ Manage and monitor complex projects, on-time and within budget.
- ⌚ Plan, organize, schedule, assign, review and evaluate the work of staff.
- ⌚ Train staff in work procedures.
- ⌚ Evaluate and develop improvements in operations, procedures, policies, or methods.
- ⌚ Research, analyze, and evaluate new service delivery methods, procedures and techniques.
- ⌚ Prepare clear and concise reports, correspondence, policies, procedures and other written materials.
- ⌚ Analyze, interpret, summarize and present administrative and technical information and data in an effective manner.
- ⌚ Interpret, explain, and ensure compliance with City policies and procedures, complex laws, codes, regulations and ordinances.
- ⌚ Conduct complex research projects, evaluate alternatives, make sound recommendations and prepare effective technical staff reports.
- ⌚ Effectively represent the Department and the City in meetings with governmental agencies, community groups and various businesses, professional, and regulatory organizations and in meetings with individuals.
- ⌚ Establish and maintain a variety of filing, record-keeping, and tracking systems.
- ⌚ Organize and prioritize a variety of projects and multiple tasks in an effective and timely manner; organize own work, set priorities and meet critical time deadlines.
- ⌚ Operate modern office equipment including computer equipment and specialized software applications programs.
- ⌚ Use English effectively to communicate in person, over the telephone and in writing.
- ⌚ Use tact, initiative, prudence and independent judgment within general policy, procedural and legal guidelines.
- ⌚ Establish and maintain effective working relationships with those contacted in the course of the work.

Education and Experience:

Any combination of training and experience that would provide the required knowledge, skills and abilities is qualifying. A typical way to obtain the required qualifications would be:

Equivalent to graduation from an accredited four-year college or university with major coursework in computer science, Management Information Technology, or a related field, and five (5) years of experience in the development and administration of computer systems, telecommunication systems and local area networks, including two (2) years of supervisory experience.

License:

- ⌚ Valid California class C driver's license with satisfactory driving record.

PHYSICAL DEMANDS

Must possess mobility to work in a standard office setting and use standard office equipment, including a computer; to operate a motor vehicle and to visit various City and meeting sites; vision to read printed materials and a computer screen; and hearing and speech to communicate in person, before groups and over the telephone. This is primarily a sedentary office classification although standing in work areas and walking between work areas may be required. Finger dexterity is needed to access, enter and retrieve data using a computer keyboard, typewriter keyboard or calculator and to operate standard office equipment. Positions in this classification occasionally bend, stoop, kneel, reach, push and pull drawers open and closed to retrieve and file information. Positions in this classification occasionally lift and carry computer and other equipment, reports and records that typically weigh less than 20 pounds.

ENVIRONMENTAL ELEMENTS

Employees work in an office environment with moderate noise levels, controlled temperature conditions and no direct exposure to hazardous physical substances. Employees may interact with upset staff and/or public and private representatives in interpreting and enforcing departmental policies and procedures.

WORKING CONDITIONS

May be required to work on evenings, weekends and holidays.

SENIOR INFORMATION SERVICES ANALYST

DEFINITION

Under general supervision, assists in the planning, coordination, and implementation of the activities, operations and duties in support of the City's network and telecommunications; coordinates assigned activities with other departments and divisions, outside agencies, and the general public; provides staff assistance to the Information Services Division; and performs related work as required.

SUPERVISION RECEIVED AND EXERCISED

Receives general supervision from assigned supervisory or management personnel. Exercises technical and functional direction over assigned staff.

CLASS CHARACTERISTICS

This is the advanced career-level class in the professional Information Services Analyst series responsible for designing, planning, implementing, and maintaining of the City's computer network infrastructure, including hardware, operating systems, and desktop/network applications. Responsibilities include maintaining network firewalls, routers, and switches, administering the e-mail system, and providing technical support to City staff. This class is distinguished from the Geographic Information Systems Coordinator by the higher level of responsibilities and broader scope of required knowledge of all hardware and software applications utilized by the city. This class is further distinguished from Information Services Manager by the latter's full management and supervisory responsibility in planning, organizing and directing the full scope of operations within the Division.

EXAMPLES OF ESSENTIAL JOB FUNCTIONS (Illustrative Only)

Management reserves the right to add, modify, change or rescind the work assignments of different positions and to make reasonable accommodations so that qualified employees can perform the essential functions of the job.

When performing Systems Analysis:

- Provides consulting advice and technical expertise to City departments regarding software needs analysis, evaluation of proposed solutions, systems integration, and solutions implementations; identifies and recommends appropriate standards or specialized hardware or software to meet the City's needs.
- Identifies opportunities for improving service delivery methods and procedures; reviews with appropriate management staff and implements improvements; works with City staff to maintain, revise, or improve the overall information technology operation.

When performing Systems Administration:

- Manages multiple servers, workstations, and terminals, ensuring proper integration of these components with existing system architecture.
- Conducts growth analysis and planning to prepare for and minimize costs of system expansion.
- Designs, develops and maintains websites and intranet sites.
- Develops and implements basic web applications and automated information technology.

- Works with vendor representatives to identify and correct causes of hardware and software malfunctions and to perform enhancements.
- Manages the allocation of resources including disks, terminals, and memory.
- Evaluates and analyzes the City's information systems needs and requirements; develops and recommends application and resource priorities; administers changes and adjustments to systems as needed.
- Monitors the performance of the system; tracks possible problem areas affecting response time and prepares recommendations for correction of problems and improvement in performance.
- Develops and implements backup policies and procedures; performs system backups.
- Develops, implements, maintains, and enforces policies and procedures for information technology operations.
- Maintains and compiles an electronic documentation library of user procedures manuals, technical references, training manuals, handbooks and guides; maintains logs, charts, diagrams and testing data for City's data, voice and video network.

When performing Database Administration:

- Designs, creates, manages, and maintains physical databases including database storage management, procedures and tools for access, database security, and monitoring and tuning the database to ensure ongoing operation and access.
- Installs, structures, tunes, and maintains database operating systems and software.
- Manages database organization and data storage.
- Monitors database system usage and performance.
- Troubleshoots and resolves database problems.
- Creates databases and/or migrates databases between machines.
- Supports client/server database access tools.
- Develops benchmarks for testing new software releases.
- Provides consultation to programmers on relational database design.
- Oversees vendor software fault resolution.

When performing Network Administration:

- Manages network architecture, including LAN, WAN, WLAN technologies including routers, switches, hubs, access points, Firewall, and DMZ.
- Designs, implements, and upgrades network architecture to accommodate growing communication requirements.
- Maintains and troubleshoots networks, systems, and applications to identify and correct malfunctions and other operational problems.

When performing Security Administration:

- Ensures safety and security of information system assets and protects systems from inappropriate access or destruction.
- Runs checks on data integrity; plans and executes disaster recovery plans.
- Develops system backup and archival methodology.
- Maintains data security and integrity by developing system access standards and procedures.
- Evaluates the adequacy of controls and security measures.
- Conducts virus avoidance procedures.
- Works with user to understand security needs and evaluates level of security required.

When performing Storage Administration:

- Designs system storage capacity to provide for efficient and timely response and operating time.
- Calculates data storage media and cost alternatives.
- Specifies sources and methods of data storage.
- Plans for efficient allocation of system storage capacity

When performing Help Desk:

- Provides on-call consulting advice and technical support to various users/client organizations regarding specific operational/applications issues.
- Responds to and resolves difficult inquiries and complaints.
- Analyzes, configures, plans, installs, maintains and troubleshoots personal computers, cabling, and peripherals.
- Conducts formal and informal training programs on the use and operation of various telecommunications and computer systems hardware and software.
- Advises and consults with users to develop required computer services; plans, coordinates, and schedules future computer applications, keeping all parties informed of plans, progress, and issues; develops and implements automated Information Technology, records, and reports in response to user needs; evaluates existing program performance and recommends modifications.
- Provides emergency response to reduce down time, correct errors, monitor vendor activity, off hours scheduled maintenance and system failures or on as needed basis.

When performing Telecommunications Administration:

- Performs diagnostic testing and analysis in troubleshooting and repair of voice network.
- Ensures that the operational, environmental, and application software are kept up with current release levels.
- Supports telecommunications, including telephone service at various sites, lease lines, landlines, and call and pager services.

When performing Information Services Operations Administration:

- Provides staff assistance to the Information Services Manager; prepares and presents reports and other necessary correspondence.
- Attends and participates in professional group meetings; stays abreast of new trends, innovations, equipment, and languages used in computer systems, information technology, word processing, spread sheets, databases, graphics, and desktop publishing.
- Assists in developing, planning, implementing and administering division goals, objectives, policies and procedures.
- Develops and manages disaster recovery plans and procedures.
- Develops justifications and recommendations for acquisition of computer hardware and software; prepares specifications for bid documents and evaluates proposals; reviews and evaluates contracts and proposals.
- Recommends the purchase of new supplies and equipment as necessary.
- Assists in the day-to-day operations of the City's technology needs; implements system upgrades; installs new and additional hardware and software as required; replaces, repairs, upgrades, and maintains system hardware and software; monitors and recommends improvement to operational performance and security; troubleshoots system problems; isolates the cause of system failures; maintains operational efficiency and load balancing of the systems.
- Performs other duties as assigned.

QUALIFICATIONS

Knowledge of:

- Operational characteristics, services, and activities of information technology.
- Modern and complex principles and practices of computer systems management, analysis, design, programming, and maintenance.
- Design, operations, properties, and capabilities of networks and network cabling.
- Various software packages including word processing, spreadsheet, data processing, graphics and desktop publishing applications and programs.
- Principles of telecommunications, including basic telephone wiring and telephone configurations, database, data communication, and operating systems.
- Operation and care of computer equipment.
- Data processing management and general administration practices and techniques.
- Operating characteristics, capabilities, capacities, and limitations of computer related peripheral equipment.
- Data management theory, principles, and practices and their application to a wide variety of services and programs.
- Operating systems such as LAN/WAN and WLAN operating systems, mini-computer applications, and telephone systems.
- Standard Website and Web Application development languages.
- Principles of lead supervision and training.
- Applicable Federal, State and local laws, codes and regulations.
- Principles and procedures of record keeping and reporting.
- Research techniques, methods, and procedures.
- Occupational hazards and standard safety practices necessary in the area of computer operations.
- Technical report writing practices and procedures.
- Modern office practices, methods and computer equipment.
- Computer applications related to the work.
- English usage, grammar, spelling, vocabulary, and punctuation.
- Techniques for dealing effectively with the public, vendors, contractors and City staff, in person and over the telephone.
- Techniques for providing a high level of customer service to public and City staff, in person and over the telephone.

Ability to:

- Implement comprehensive computer and telecommunications operations-related projects and training programs.
- Perform difficult telecommunications and computer information system operation, installation, repair, and maintenance work involving the use of independent judgment and personal initiative.
- Administer websites and web-based applications.
- Analyze problems, identify alternative solutions, project consequences of proposed actions, and implement recommendations in support of goals.
- Interpret and apply the policies, procedures, laws, and regulations pertaining to assigned programs and functions.
- Configure, monitor and support network routing, packet switching and firewall equipment.
- Accurately evaluate and prioritize hardware and software requests.

- Research, develop, and recommend cost-effective technical system improvements.
- Prepare and maintain accurate and complete records.
- Prepare clear and concise reports.
- Respond to requests and inquiries from end-users.
- Exercise good judgment, flexibility, creativity, and sensitivity in response to changing situations and needs.
- Understand and follow oral and written instructions.
- Operate, install, maintain, configure, and troubleshoot a variety of highly technical computer equipment and peripherals.
- Operate modern office equipment including computer equipment and software programs.
- Organize own work, set priorities and meet critical time deadlines.
- Use English effectively to communicate in person, over the telephone and in writing.
- Use tact, initiative, prudence and independent judgment within general policy, procedural and legal guidelines.
- Establish and maintain effective working relationships with those contacted in the course of the work.

Education and Experience:

Any combination of training and experience that would provide the required knowledge, skills and abilities is qualifying. A typical way to obtain the required qualifications would be:

Equivalent to graduation from an accredited four-year college or university with major coursework in computer science, information technology, business administration, or a related field, and three (3) years of responsible computer systems, systems analysis, network management, or related experience.

License:

- Valid California class C driver's license with satisfactory driving record.

PHYSICAL DEMANDS

Must possess mobility to work in a standard office setting and use standard office equipment, including a computer; to operate a motor vehicle and to visit various City sites; vision to read printed materials and a computer screen; and hearing and speech to communicate in person, before groups and over the telephone. This is primarily a sedentary office classification although standing in work areas and walking between work areas may be required. Finger dexterity is needed to access, enter and retrieve data using a computer keyboard or calculator and to operate standard office equipment and computer systems hardware. Positions in this classification occasionally bend, stoop, kneel, reach, push and pull drawers open and closed to retrieve and file information. Employees must possess the ability to lift, carry, push, and pull materials and objects necessary to perform job functions.

ENVIRONMENTAL ELEMENTS

Employees work in an office environment with moderate noise levels, controlled temperature conditions and no direct exposure to hazardous physical substances. Employees may interact with upset staff and/or public and private representatives in interpreting and enforcing departmental policies and procedures.

WORKING CONDITIONS

May be required to work on evenings, weekends and holidays.

AGENDA SUMMARY

RE: Centerline Striping 2011
Bid No. 2011-16

FOR AGENDA DATE: APRIL 19, 2011

AGENDA ITEM NO.:

13

RECOMMENDATION:

Appropriate \$15,000 from Gas Tax Funds for the Centerline Striping 2011 Project.

SUMMARY:

The Centerline Striping 2011 project is an annual project to repaint street centerlines, edge lines and bike lanes in various locations throughout the city. This is a continuation of last year's Centerline Striping 2010 project in which we were able to repaint over 21 miles of roadway in the City. This year's project will continue working down the priority list of street painting needs.

City streets are recommended to be repainted every 3 to 5 years to keep the markings sharp and visible. The goal of the Centerline Striping program is to paint enough roadway miles each year so that the entire City can be restriped on the 3-to-5 year cycle. Painting center lines, bike lanes, and edge line stripes on streets and roads is important for guiding motorists, and to reduce the possibility of collisions both head on and by vehicles colliding with vehicles, persons or other objects along the edge of the roadway.

Since the Streets Division's old paint striping truck has been out of service for four years now, and the cost of \$70,000 and \$100,000 to bring the vehicle back into working order is not practical due to the age of the vehicle, putting this project out to public bid is the most cost effective means of accomplishing this important work. This project will allow us to keep up a routine maintenance cycle keeping our arterial streets with prominent markings for the next few years. The project is anticipated to be completed by September 1, 2011.

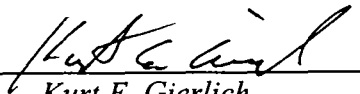
Staff recommends Council authorize \$15,000 to be appropriated from Gas Tax Funds to complete the Centerline Striping 2011 project.

Prepared by: Scott Ellsmore, Engineering Technician / 4.

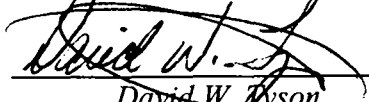
FISCAL IMPACT:

Expenditures: Appropriate \$15,000 from Proposition 42 funds to account 227-47000-7225-PJ 499-227

DEPARTMENT HEAD SIGNATURE:


 Kurt E. Gierlich
 City Engineer

CITY MANAGER SIGNATURE:


 David W. Tyson
 City Manager

REVIEWED BY:

City Attorney
 Finance
 Public Works

DATE:

4-13-11
 4-12-11
 4-12-11

INITIALS:

WRB
 PR
 BY

Council Action:

Ordinance No. _____

Resolution No. _____

AGENDA SUMMARY**RE: CITY ENGINEER APPOINTMENT****FOR AGENDA DATE: APRIL 19, 2011****AGENDA ITEM No.:**

14

RECOMMENDATION:


Authorize City Manager to execute an City Engineering At-Will Employment Agreement with Kurt Gierlich including corresponding salary adjustment.

SUMMARY:

The Charter of the City of Eureka, Section 600 provides that the City Manager shall appoint department heads subject to approval of the City Council. In addition, it is important to establish certain conditions of employment and to set working conditions of employee within the framework of an at-will employment relationship. The attached contract, which has been negotiated in accordance with the City's Charter and Municipal code, provides the conditions of employment and employment relationship of the City Engineer.

Subject to the Charter and Municipal Code, it is recommended the City Council approve the attached At-Will-Agreement to retain the services of the Kurt Gierlich as the City Engineer. By approving this agreement the City does provide him with an inducement to remain in City employment and makes possible full work productivity by assuring his peace of mind with respect to future security. This Agreement is very similar to the At-Will Agreements previously approved for the Director of Community Development, Finance Director, Personnel Director, Redevelopment Director, and Fire Chief.

FISCAL IMPACT: No increased fiscal impact with the recommended action as funding is available in the Fiscal Year 2010/11 Budget. The projected annual salary and benefit total for this position is approximately \$137,500. Based upon the adoption of the FY 2010/11 Budget this position had been scheduled for an early retirement incentive, however with Kurt Gierlich's rehiring the incentive will now be withdrawn. Annual General Fund cost of this position is approximately \$35,000.

CITY MANAGER SIGNATURE:


David W. Tyson
City Manager

REVIEWED BY:**DATE:****INITIALS:****Council Action:**

Ordinance No. _____

Resolution No. _____

CITY OF EUREKA CITY ENGINEER AT-WILL EMPLOYMENT AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT, is made and entered into this first day of May, 2011, by and between the City of Eureka, California (hereinafter "CITY") and Kurt Gierlich (hereinafter "EMPLOYEE").

WHEREAS, the Charter of the City of Eureka, Section 600 and following provide that the City Manager shall appoint department heads subject to approval of the City Council; and

WHEREAS, the City Manager desires to continue the appointment of EMPLOYEE to perform the duties of City Engineer on behalf of CITY; and

WHEREAS, it is the desire of the parties to establish certain conditions of employment and to set working conditions of EMPLOYEE within the framework of an at-will employment relationship; and

WHEREAS, it is the intention of the parties to fully comply with the provisions of the Charter of the City of Eureka and its Municipal Code; and

WHEREAS, subject to the Charter and Municipal Code, it is the desire of the City Council to (1) retain the services of EMPLOYEE and to provide inducement for him to remain in such employment, (2) to make possible full work productivity by assuring EMPLOYEE'S morale and peace of mind with respect to future security, and (3) to provide termination and severance pay upon the terms and conditions fully set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

SECTION 1. DUTIES.

A. Under administrative direction of the City Manager and the Assistant City Manager, the City Engineer is responsible for managing the CITY's programs and activities involving Capital Improvement, Development, Traffic/Signals, Property Management and Geographical Information.

B. The City Engineer is responsible for supervising and directing the work of professional and support staff involved in Capital Improvement, Development, Traffic/Signals, Property Management and Geographical Information.

C. The City Engineer shall perform such other legal and reasonable duties as the City Manager or the Assistant City Manager may direct.

D. Neither the Council nor its members shall interfere with the execution by EMPLOYEE of his powers and duties, or order directly or indirectly, the appointment any person to any office or employment, or his removal therefrom. Except for the purpose of inquiry, the Council and its members shall deal with City departmental administration solely through the City Manager, and neither the Council nor any member thereof shall give orders to EMPLOYEE or any subordinate thereof, either publicly or privately.

E. It is recognized that the position of City Engineer may call for unusual work hours. It is therefore agreed the EMPLOYEE will set his own works hours while devoting the necessary amount of time and energy needed to faithfully perform the duties of City Engineer under this Agreement.

SECTION 2. TERM.

A. This Agreement shall commence May 1, 2011.

B. Pursuant to the Charter of the City of Eureka and its Municipal Code, the parties acknowledge and agree that the City Engineer serves at the pleasure of the City Manager; that there exists no contract for or right to employment; either expressed or implied, with the sole exception of the provisions contained herein; that the City Manager may terminate the employment of the EMPLOYEE with or without cause; and that upon such termination, with or without cause, EMPLOYEE'S sole remedy under the laws of the State of California, the laws of these United States, the Charter of the City of Eureka, its Municipal Code, and this Agreement consists of the provisions contained in Section 3 hereof.

C. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of EMPLOYEE to resign at any time from his position with CITY, subject only to the provisions set forth in Section 3 of this Agreement.

D. EMPLOYEE agrees to remain in the exclusive employ of CITY during the employment term, and neither to accept, nor to become employed by another employer until said termination date, unless said termination date is effected as hereinafter provided. Notwithstanding, and at the sole discretion of CITY, EMPLOYEE may accept compensation for occasional outside consulting, writing, or speaking engagements; or while teaching or training; or while serving on the Board of Directors of one or more corporations; provided however, that such outside activities or work are not inconsistent or incompatible with CITY employment.

SECTION 3. TERMINATION AND SEVERANCE PAY.

A. This Agreement shall terminate upon the occurrence of any of the following events:

1. Upon thirty (30) days notice given to CITY by EMPLOYEE; or
2. Upon the death of EMPLOYEE; or
3. Upon the permanent disability and inability of the EMPLOYEE to perform the essential duties of his position; or
4. Upon the effective date of retirement from CITY service pursuant to PERS; or
5. Upon decision of the City Manager of CITY to terminate EMPLOYEE, with cause.

B. In the event EMPLOYEE is terminated without cause, at any time during the term of this Agreement, CITY agrees to pay to EMPLOYEE a lump sum cash severance payment equal to the total of EMPLOYEE'S vacation and such other accruals, including sick leave, as he may be entitled to, and the then current salary (including benefits) that he would have been entitled to receive for six (6) months under the terms of this Agreement.

C. CITY reserves the right to terminate this Agreement without liability for any severance pay whatsoever, when such termination is made for cause. "Termination for Cause" shall include:

1. Willful breach of this Agreement pursuant to Labor Code Section 2924 as that code section has been interpreted.
2. Habitual neglect of the duties required to be performed as City Engineer pursuant to Labor Code Section 2924 as that code section has been interpreted.
3. Any acts of dishonesty, fraud, or other acts of moral turpitude.
4. Conviction of any act which would constitute a crime, whether misdemeanor or felony, and which would bring disrespect to the Office of City Engineer or CITY.
5. Willful violations of CITY policies of a serious nature, including for example, CITY'S sexual harassment or drugs-in-the-work-place policies.

D. Pursuant to Eureka Municipal Code, should EMPLOYEE be terminated or suspended for cause, EMPLOYEE shall have a written notice of the cause of his removal or suspension from duty, and he shall have the opportunity to be heard on the cause of his removal or suspension before a public hearing of the City Council.

E. In the event CITY at any time during the employment term reduces the salary or other financial benefits of EMPLOYEE in a greater percentage than an applicable across the board reduction for management, mid-management, professional and confidential employees, or in the event the City refuses, following written notice, to comply with any other provision benefiting EMPLOYEE herein, then, in that event EMPLOYEE may at his option, be deemed to be "terminated without cause" at the date

of such reduction or such refusal to comply with the meaning or the context of the herein severance pay provision.

SECTION 4. COMPENSATION.

A. In view of the recommendations made in the 2006 Koff Classification and Compensation Study wherein the City Engineer position receive greater than a 15% salary increase over the current top step annual salary for this position of \$98,844 to be in line with comparable cities, CITY agrees to increase the top step (Step 5) of the City Engineer salary 7% to \$105,763 annually, and to pay EMPLOYEE for his services rendered pursuant hereto an initial, annual, base salary of \$105,763 (Step 5), and City also agrees to add to that amount any additional equity adjustments, cost of living increases, compensation increases, etc, the City Council may approve after January 1, 2011 for City management employees, which shall be added to the above compensation in accordance with sections 4.B and 4.C below; the current compensation range for the City Engineer classification payable in installments at the same time as other employees of CITY are paid. In addition and pursuant to CITY personnel policies and procedures, EMPLOYEE will be evaluated and reviewed annually following the effective date of this Agreement, and annually thereafter.

B. CITY agrees to review for increases said compensation range and/or other benefits of EMPLOYEE in such amounts and to such an extent as the City Council may determine that it is desirable to do so on the basis of an annual compensation review of said EMPLOYEE. The compensation review shall take place at the same time all other employees are reviewed.

C. Except as hereinafter provided, EMPLOYEE shall receive such other and further benefits as are accorded other management employees of CITY, including, but not limited to, cost of living adjustments and other salary compensation adjustments, holidays, sick and bereavement leaves, and executive leave days, at the same time such benefits are accorded to other said employees.

D. Employee shall begin service with a vacation leave bank of 120 hours; with an initial accrual rate for future vacation leave at the rate equivalent of an employee with nineteen (19) years' service.

E. Employee shall begin service with a sick leave balance of 24 hours.

SECTION 5. AUTOMOBILE.

EMPLOYEE'S duties require that he shall have the exclusive and unrestricted use at all times during his employment with the CITY of an automobile. Should the CITY not provide said vehicle, EMPLOYEE will furnish his own personal vehicle for which the CITY shall provide a monthly allowance of Three Hundred Fifty Dollars (\$350).

SECTION 6. EQUIPMENT.

- A. CITY shall provide all business computing, and communications equipment and service costs, furniture, and fixtures necessary and convenient to carry out the terms of this Agreement.
- B. All such equipment, furniture and fixtures provided by CITY shall be deemed the property of CITY.

SECTION 7. DUES, SUBSCRIPTIONS, PROFESSIONAL DEVELOPMENT.

- A. To the extent, as provided and agreed upon by the City Council, in the CITY'S annual budget, CITY agrees to pay the dues and subscriptions of EMPLOYEE necessary for his contribution and full participation in national, regional, state and local associations necessary and desirable for his continued professional participation, growth, and advancement, and to maintain active communication with and through local organizations, and for the good of CITY.
- B. To the extent, as provided and agreed upon by the City Council, in the CITY'S annual budget, CITY hereby agrees to pay the travel and subsistence expenses of EMPLOYEE for professional and official travel, meetings, and occasions adequate to continue the professional development of EMPLOYEE and to adequately pursue necessary official and other functions for CITY.
- C. To the extent, as provided and agreed upon by the City Council, in the CITY'S annual budget, CITY also agrees to pay for the travel and subsistence expenses of EMPLOYEE for short courses, institutes, and seminars that are necessary for his professional development and for the good of CITY.

SECTION 8: INDEMNIFICATION.

In addition to that required under state and local law, Employer shall defend, save harmless, indemnify Employee against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of EMPLOYEE'S duties. Employer will compromise and settle any such claims or disputes and pay the amount of any settlement or judgment rendered thereon.

SECTION 9. OTHER TERMS AND CONDITIONS OF EMPLOYMENT.

- A. Upon recommendation of the City Manager, the City Council may fix any such other

terms and conditions of employment, as it may determine from time to time, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the Charter of the City of Eureka and its Municipal Code, or any other law.

B. All provisions of the Charter of the City of Eureka and its Municipal Code, and regulations and rules of CITY relating to usage of vacation, administrative, and sick leave; retirement and pension system contributions; holidays; and other fringe benefits and working conditions as they now exist or hereafter may be amended, also shall apply to EMPLOYEE as they would to other management, mid- management, professional and confidential employees of CITY, in addition to said benefits enumerated specifically for benefit of EMPLOYEE, except as herein provided.

SECTION 10. GENERAL PROVISIONS.

A. The text herein shall constitute the entire Agreement between the parties.

B. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of EMPLOYEE.

C. This Agreement shall become effective May 1, 2011.

D. If any provisions, or any portion thereof, contained in this Agreement is held to be unconstitutional, invalid, or unenforceable, the remainder of this Agreement or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

E. If any provisions of the of CITY'S Personnel Rules, Regulations, and Policies conflict with the at-will employment status described in this Agreement, such conflicts will be resolved in favor of the at-will status contained in this Agreement.

F. CITY and EMPLOYEE agree that they will, at all times, assist each other in defending any litigation involving CITY, or EMPLOYEE'S duties with CITY, and CITY agrees to defend EMPLOYEE against any claim or action against him arising out of an act or omission occurring within the scope of his employment. The parties shall each comply with the requirements of Section 825 of the Government Code or its successor, in implementing this paragraph.

IN WITNESS WHEREOF, the City of Eureka, State of California, has caused this Agreement to be signed and executed in its behalf by its City Manager, and duly attested by its City Clerk, and the EMPLOYEE has signed and executed this Agreement, both in duplicate, the day and year first above written.

FOR THE CITY OF EUREKA:

ATTEST:

By: _____
David W. Tyson,
City Manager

Pamela Powell,
City Clerk

EMPLOYEE:

By: _____
Kurt E. Gierlich

AGENDA SUMMARY**RE: CITY ATTORNEY RECRUITMENT****FOR AGENDA DATE: APRIL 19, 2011****AGENDA ITEM No.:**

15

RECOMMENDATION:

Authorize the City Manager to execute an Executive Search Services Agreement between the City of Eureka and Peckham and McKinney to provide Executive Search Services for the position of City Attorney.

SUMMARY: In the interest of assisting the Mayor and City Council with the recruitment of a City Attorney, Staff has contacted a number of Executive Search Consultants. The recruitment process as outlined by each consultant is very similar and will include the follow steps:

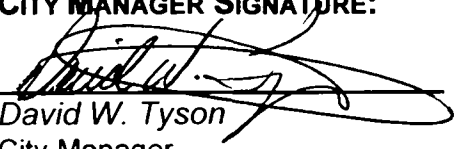
- Mayor and City Council interviews;
- Preparation of advertisement and interview materials;
- Advertizing and recruitment of potential candidates;
- Final Candidate selection; and
- Assistance in negotiation with final candidate(s)

The executive recruitment process will cost \$16,000 with approximately \$5,500 to \$7,500 in additional costs depending on the level of involvement by City staff in the process. The more involvement by City Staff in the recruitment process the lower our out-of-pocket cost. Staff assistance could include: preparation of advertizing and interview materials; advertizing; coordination of interviews; and final negotiations with potential candidates.

In order to move the process of recruiting for the City Attorney forward, Staff recommends the City Council authorize the City Manager to execute a Executive Search Services Agreement between the City of Eureka and Peckham and McKinney to provide Executive Search Services in an amount not-to-exceed \$16,000; plus expenses.

Attachment: EXECUTIVE SEARCH SERVICES AGREEMENT

FISCAL IMPACT: No additional appropriation will be required with this recommendation as the funds previously budgeted for the City Manager recruitment will be utilized in the City Attorney search. The executive recruitment process will cost \$16,000 with approximately \$5,500 to \$7,500 in additional costs depending on the level of involvement by City staff in the process. Costs will be allocated between the General Fund; Redevelopment Agency; and Water/Wastewater Funds in a ratio similar to the City Attorney's department allocation.

CITY MANAGER SIGNATURE:

David W. Tyson
City Manager

REVIEWED BY:**DATE:****INITIALS:****Council Action:**

Ordinance No. _____

Resolution No. _____

EXECUTIVE SEARCH SERVICES AGREEMENT

City of Eureka **City Attorney**

A complete description of the services to be provided is contained in a proposal from Peckham & McKenney to the City of Eureka which is incorporated herein by reference.

The professional fee for the recruitment of the City Attorney is \$16,000. One-third of this fee is due as a retainer upon execution of this agreement. The remainder of the fee will be divided and billed in two separate, monthly invoices. Full payment of the professional fee is due three months from execution of the agreement or when a candidate has accepted an offer of employment, whichever comes first. The professional fee includes three meetings with the client; the first to develop the Candidate Profile, the second to recommend finalists, and the third to facilitate finalist interviews.

In addition, the City is responsible for reimbursement of expenses not to exceed \$5,500 to \$7,500. Expenses include out-of-pocket costs associated with advertising, printing, consultant travel, clerical, background checks, telephone, supplies and postage. The Consultant shall provide the City with a listing of expenses by category of expense as a part of monthly billings. Candidate expenses to attend finalist interviews with the City are not included in this not-to-exceed figure and are to be reimbursed by the City directly to the candidate. Peckham & McKenney agrees that all direct costs incurred during the course of this assignment and any consultant travel expense necessary to pre-qualify prospective candidates for employment will not exceed the expense limits established in this agreement, unless preapproved and documented by the City.

Peckham & McKenney will work closely and communicate regularly with the City. Both parties will exhibit a full faith effort to ensure a timely and successful search. Should the City choose to cancel or postpone the search at any time after execution of this agreement, the City will be responsible for payment in the amount of the percentage of the work complete as it applies to the four-month period.

Executive Search Services Agreement
Page Two

This placement is guaranteed for a period of two years from the first day of employment. Should the employee recommended and placed by our firm leave for any reason during the guarantee period we will replace that employee on a one-time basis at no additional cost, except expenses incurred.

All information regarding candidates is provided in strict confidence and should be used solely for the purpose of selecting qualified applicants. Candidate information must not be divulged to persons who do not have a direct need to know except for reference and background investigations and with the candidate's consent.

Peckham & McKenney carries Professional Liability Insurance (\$1,000,000 limit) and Commercial General Liability Insurance (\$2,000,000 General Liability, \$4,000,000 General Aggregate, \$1,000,000 Personal Injury and \$4,000,000 Products).

In the event of any action or proceeding brought by either party to this agreement, the prevailing party shall be entitled to recover all costs and fees of its attorney in such action or proceeding, including cost of appeal, if any, in such amounts as are reasonable.

Thank you for the opportunity to be of service. We look forward to a successful relationship.

Peckham & McKenney

Phil McKenney

Date

City of Eureka

David Tyson

Date

**** PLEASE RETAIN ONE COPY FOR YOUR RECORDS ****

AGENDA SUMMARY

RE: Agreement Amendment Between the City of Eureka and Humboldt Community Services District for Regional Wastewater Treatment

FOR AGENDA DATE: APRIL 19, 2011

AGENDA ITEM No.:

16

RECOMMENDATION:

Authorize the City Manager to execute an updated Agreement between the City of Eureka and Humboldt Community Services District for Regional Wastewater Treatment.

SUMMARY:

On March 28, 2011, the Humboldt Community Services District approved an updated agreement between the City of Eureka and Humboldt Community Services District for Regional Wastewater Treatment. The agreement approved by the HCSD Board contained several minor revisions from the agreement presented to and approved by the City Council on November 2, 2010. In as much, staff is bringing the agreement with minor revisions back to Council for final approval.

As you are aware, in 1982, the City of Eureka entered into an agreement with Humboldt Community Services District, a special purpose District, for Regional Wastewater Treatment. The agreement, among other things, establishes a framework for the City to transport, treat and dispose of all sewage originating within the District, establish cost sharing for operations and capital improvements, and establish capacity rights for both parties within the Publicly Owned Treatment Works (POTW).

(continued)

FISCAL IMPACT: A slight increase in revenue will result from the District's use of shared facilities being increased from 2.26% to 3% of the collection system operating budget. The agreement further defines cost sharing for the Martin Slough Interceptor when it is constructed.

DEPARTMENT HEAD SIGNATURE:

Mike Knight

Michael Knight
Assistant City Manager-Operations

CITY MANAGER SIGNATURE:

David W. Tyson

David W. Tyson
City Manager

REVIEWED BY:

Finance
Engineering
Public Works
Community Development

DATE:

4-14-11
4-14-11
4-14-11
4-14-11

INITIALS:

PLR
KG
BAY
LNS

Council Action:

Ordinance No. _____

Resolution No. _____

The 1982 agreement has served the City and District well; however, some of the agreement language is dated or inapplicable, and there have been significant regulatory changes since 1982. In May 2007, the City requested the District enter into good faith negotiations to update the agreement.

Agreement negotiations were initiated in June 2007 and have been ongoing. Negotiations were facilitated by a third party and included City staff from Finance, Engineering, Public Works, District staff, District Board Member, and City and District Counsel. The framework of the contract has not changed. Revisions to the agreement focused on updating existing language, deleting language that is no longer applicable, modified, deleted or added definitions, amended cost sharing and added new exhibits, including Exhibit C for the Martin Slough Interceptor Project.

On November 2, 2010, the City Council considered the amended agreement and after deliberation authorized the City Manager to execute the agreement between the City of Eureka and Humboldt Community Services District for Regional Wastewater Treatment.

On November 9, 2010, HCSD Board of Directors considered the agreement. Prior to the Board meeting, the Board of Directors received a letter from Mr. John Belsher, Belsher, Becker & Roberts and Mr. Richard Smith, Harland Law Firm, both representing the Ridgewood Village Project. These two letters raised similar concerns about the agreement. The concerns focused on: 1) Division of Peak Wet Weather Flow (PWWF); 2) Need for CEQA review; 3) Adding a point of connection for Ridgewood Village at Lundblade Drive to the agreement; and 4) Allocation of Operation and Maintenance Expense.

Based on the concerns raised, the HCSD Board directed staff to evaluate the issues and provide a report to the Board. HCSD staff worked with City staff and we agreed on several minor revisions described on page 3 to address the issues raised.

An opinion the amended Agreement is not subject to CEQA was provided to Council and included in both the October 19, 2010 and November 2, 2010 agenda summary. Based on a request by the HCSD Board of Directors the City and District obtained another legal opinion from Amrit S. Kulkarni, Attorney with Meyers/Nave (copy attached). The opinion recommended adding a sentence to Section 1.11 to clarify Proportional Capacity Share. Section 1.11 has been revised to include the recommendation of Meyers/Nave regarding CEQA review.

The Meyers/Nave opinion supports staffs prior position that the City Council may base a decision to approve the Agreement without CEQA review based on the categorical exemption for "existing facilities" under Guidelines section 15310 since the Agreement provides for "negligible or no expansion of use" of the wastewater treatment system and facilities covered by the Agreement. In addition, the determination can be based on the statutory exemption for "rates, tolls, fares and other charges" Public Resources Code section 21080 (b) (8) and Guidelines section 15273, and/or the determination the Agreement is "not a project" under CEQA.

RE: Agreement Amendment Between the City of Eureka and Humboldt Community Services District for Regional Wastewater Treatment

FOR AGENDA DATE: APRIL 19, 2011

AGENDA ITEM NO.:

Page 3

On March 28, 2011, the HCSD Board of Directors approved the agreement amendment with several minor modifications as follows:

1. Section 1.11 Proportional Capacity Share – Included Meyers Nave suggested wording “This Agreement shall not be interpreted as altering “Proportional Capacity Share”, as defined herein, as it exists at the time of formation of this Agreement.” Delete Section 1.11 (c) defining Peak Wet Weather Flow.
2. Section 2.5 Payment of Costs – Delete the second paragraph referencing payment to the Reserve Account. The Reserve Account is now part of a new Section 2.9 “Wastewater Reserve Account”.
3. Section 3.2 Reserve Capacity Rights – Add new Section 3.2 (b) definition that Average Dry Weather Flow (ADWF) shall be the basis for calculating new sewer connections.

Attached is a copy of the proposed agreement approved by the City Council November 2, 2010, with new language shown in red and language to be deleted shown by strike-through.

Staff recommends Council authorize the City Manager to execute the updated agreement between the City of Eureka and Humboldt Community Services District for Regional Wastewater Treatment.

Attachments:

1. Revised Wastewater Agreement
2. Meyers/Nave CEQA Opinion

AGREEMENT
BETWEEN THE CITY OF EUREKA AND HUMBOLDT COMMUNITY SERVICES
DISTRICT
FOR REGIONAL WASTEWATER TREATMENT

THIS AGREEMENT is made and entered into on _____, 20____, by and between the City of Eureka, a municipal corporation herein called "City"; and Humboldt Community Services District, a special purpose District, herein called "District".

W I T N E S S E T H

WHEREAS, City and District have heretofore entered into an Agreement dated February 1, 1982, to construct and operate a project designated as the Greater Eureka Area Wastewater Project, and

WHEREAS, City and District are each empowered by law to plan, acquire, maintain, establish, operate and finance wastewater collection, treatment and disposal facilities; and

WHEREAS, City and District determined that the Greater Eureka Area Wastewater Project could be best designed, financed, constructed and operated if it were handled solely by City in accordance with the provisions of said Agreement; and

WHEREAS, The Greater Eureka Area Wastewater Project has been constructed and operational since 1984 and is nearing the end of its design life; and

WHEREAS, The City owns and operates said Project;

WHEREAS, City and District each operate a wastewater collection system in areas within the territory shown on the map attached hereto marked Exhibit A; and

WHEREAS, District desires to continue to contract for the transportation, treatment and disposal of all wastewater originating within the District; and

WHEREAS, the parties wish to enter into a new agreement for the purpose of continuing the operation, maintenance and construction of existing and new publicly owned treatment works;

NOW, THEREFORE, the City and District do hereby agree, for and on behalf of themselves and their successors in interest as follows:

ARTICLE 1 – DEFINITIONS

Section 1.1 “GENERAL”. Unless the context otherwise requires, the words and terms defined in this Article shall, for the purposes hereof, have the meanings herein specified.

Section 1.2. “THE GREATER EUREKA AREA WASTEWATER PROJECT (GEAWP)”.

The Greater Eureka Area Wastewater Project consists of the Greater Eureka Area Wastewater Treatment Plant (GEAWTP), also known as the Elk River Wastewater Treatment Facility, and the Crosstown Interceptor Project which includes the Crosstown Interceptor pipeline and the Hill Street, Washington Street, and McCullens Avenue wastewater pumping stations. (See Exhibits B-1 & B-2).

Section 1.3 “OPERATION AND MAINTENANCE EXPENSE”. “OPERATION AND MAINTENANCE (O&M) EXPENSE” means those expenses required to be expended by the City for operating and maintaining the GEAWP and any expansion added by amendment to this agreement. Operation and Maintenance expense shall include the costs of administering this agreement and any other agreements or contracts associated with operation and maintenance activities of the shared system including a portion of the City administration and overhead, direct and indirect salary costs, material and supplies, services, utilities, and minor repairs, minor replacements, minor improvements, audits and/or necessary reserves for operation contingencies and cash flow requirements. “Minor” as used herein is defined as work costing \$15,000 or less.

Section 1.4 “CAPTIAL EXPENSE”. “CAPITAL EXPENSE” means those Project expenses required to construct major repairs, replacements and improvements to any portion of GEAWP and any expansion added by amendment to this agreement. “Major”

shall be defined as work above \$15,000 in cost or work that involves the hiring of a private contractor.

Section 1.5 "GRANT PROGRAMS". Grant Programs include Federal, State, or other grants, loans, or other financial assistance for wastewater facilities.

Section 1.6 "FISCAL YEAR". "FISCAL YEAR" means the period from July 1st to and including the following June 30th.

Section 1.7 "NPDES Permit" (National Pollutant Discharge Elimination System Permit). A permit issued in accordance with the national program under Section 402 of the Clean Water Act for regulation of discharges of pollutants from point sources to waters of the United States.

Section 1.8 "PRETREATMENT". The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in the wastewater prior to or in lieu of introducing such pollutants into the POTW. This reduction or alteration can be obtained by physical, chemical or biological processes, by process changes or by other means accepted by the Regional Water Quality Control Board or United States Environmental Protection Agency.

Section 1.9 "PROJECT". Project means any capital improvement project undertaken to construct major repairs, replacements, or improvements to any portion of the GEAWP, and any expansion added by amendment to this agreement to the City's wastewater collection, transport, and treatment system POTW, OR any project that adds new connection points into the new or existing shared portion of the City's wastewater system beyond those specified in Exhibit B.

Section 1.10 "POTW" (Publicly Owned Treatment Works): Any wastewater conveyance and/or treatment facility that is owned by a public agency. For the purpose of this agreement,

POTW refers to the contiguous wastewater conveyance and treatment system owned by the Humboldt Community Services District or the City of Eureka.

Section 1.11 "PROPORTIONAL CAPACITY SHARE". This Agreement shall not be interpreted as altering "Proportional Capacity Share", as defined herein, as it exists at the time of formation of this Agreement. "PROPORTIONAL CAPACITY SHARE" means the proportion that the Reserved Capacity right of each party hereto bears to the total capacity of each component of the Project (as shown in Exhibits B-1 & B-2, C, and D, etc.) as stated in:

- (a) Average dry weather flows (ADWF) expressed in terms of millions of gallons per day (MGD) as measured during the month of August (should there be abnormal levels of precipitation during the month of August then the month of July of the same year shall be used);
- (b) Peak day dry weather flows (PDWF) expressed in terms of millions of gallons per day (MGD) as analyzed from the peak daily flows during the month of August as described above;
- (c) ~~Peak diurnal dry weather flows (PDDWF) expressed in terms of millions of gallons per day (MGD) as analyzed from the flow records during the peak daily dry weather flow described above; Peak wet weather flows (PWWF) expressed in terms of millions of gallons per day (MGD) as projected by the Hydrologic Model prepared during the Facilities Plan 2006 through 2008. These flows represent the 20-year, one-hour event based on the calibrated I/I model combined with the years of precipitation record biochemical oxygen demand expressed in terms of pounds per day;~~
- (d) maximum month biochemical oxygen demand(MM BOD) expressed in terms of pounds per day and determined from the plant records;
- (e) suspended solids expressed in terms of pounds per day;
- (f) maximum month suspended solids(MM SS) expressed in terms of pounds per day and determined from the plant records; and
- (g) Ammonia-N expressed in terms of pounds per day.

Section 1.12 "PROPORTIONAL VOLUMETRIC SHARE". "PROPORTIONAL VOLUMETRIC SHARE" means the proportion that the total annual sewage volume of Flow, BOD, and SS originating from each party hereto bears to the total combined annual sewage volume of Flow, BOD, and SS flowing through each component of the POTW.

Section 1.13 "DEFINITIONS". For the purposes of this Agreement, the words "Sanitary Sewer Flow", "Sewer Flow", "Flow", "BOD", AND "SS" shall mean the following:

- "Sanitary Sewer Flow", "Sewer Flow" and "Flow" mean wastewater intended to carry only sanitary or sanitary and industrial waste waters from residences, commercial buildings, industrial plants, and institutions measured in million gallons per day.
- "BOD" means Biochemical Oxygen Demand (five day). The five day BOD determination involves the measurement of the dissolved oxygen used by micro-organisms in the biochemical oxidation of organic matter.
- "SS/NFR" means suspended solids. The suspended solids fraction includes the settleable solids that will settle to the bottom of a cone- shaped container (called an Imhoff cone) in a 60-minute period.
- A Sewer System Management Plan, also called an SSMP, is a document that describes the activities an agency uses to manage a wastewater collection system effectively.

Effective management of a wastewater collection system includes:

1. Maintaining or improving the condition of the collection system infrastructure in order to provide reliable service into the future;
2. Cost-effectively minimizing infiltration/inflow (I/I) and providing adequate sewer capacity to accommodate design storm flows; and
3. Minimizing the number and impact of sanitary sewer overflows (SSO's) that occur;

In order to achieve the above goals it is expected that each wastewater collection system agency develop and implement an SSMP.

Section 1.14 "FINES". Fines are defined as costs of penalties levied on the City or HCSD, or judgments against the City or HCSD, or litigation, administration or other costs incurred by the City, by any public or private entity, stemming from capacity, overflow, odor, environmental, or other problems associated with the operation of the City-HCSD shared POTW portion of the City's wastewater collection, transport, and treatment system. Fines shall be allocated on a proportional volumetric share in the annual budget. Nothing in this paragraph, however, shall be construed to make a party to this Agreement liable for any fines imposed arising out of the gross negligence or willful misconduct of another party.

Section 1.15 "SHARED FACILITIES". Shared facilities are those City owned and maintained portions of the POTW that are shared by the City and the District outside those constructed in the GEAWP (Elk River Wastewater Treatment Facility and the Cross Town Interceptor system). Shared facilities are listed in Exhibit D, and may be amended or revised from time to time as mutually agreed upon by City and District.

ARTICLE II – FINANCIAL

Section 2.1. "ANNUAL BUDGET". City shall adopt an annual fiscal year budget for the City's portion of the POTW. A copy of the City's proposed annual fiscal year budget shall be mailed to the District by May 1 of each calendar year. District may submit any comments to the City prior to May 30th of the same year. City shall also provide the District with a detailed itemized cost breakdown of the applicable wastewater annual capital expense, operation and maintenance expense, capital reserve expense, District use of City facilities expense, and proposed capital expenditures as presented in the City's annual fiscal year budget.

Section 2.2. "RECORDS AND ACCOUNTS". City shall cause to be kept accurate and correct books of account, showing in detail the costs of administration, bond interest, bond redemption, capital improvements, operation and maintenance, and all financial

transactions of the enterprise fund for the City's shared portion of the POTW. Said books of account shall be open to inspection during normal business hours by a certified accountant or other person(s) designated by either party hereto to inspect said books of accounts. The City shall cause the books of account and other financial records of the City to be audited annually by an independent certified public accountant and shall submit a copy of said audit to the District.

Section 2.3. "ALLOCATION OF CAPITAL EXPENSE". The allocation of annual capital expense of the Greater Eureka Area Wastewater Project between the City and the District is as follows:

City	67.9%
District	32.1%

These percentages result from the proportional capacity share for each entity of flow and load as shown in Exhibits B-1 & B-2.

The allocation of capital expenses for Shared Facilities shall be as shown in Exhibit D.

The allocation of annual capital expense for future projects including the Martin Slough Interceptor and future projects to expand capacity of the Elk River Treatment Facility shall be as set forth in Exhibit C and any future exhibits appended to this Agreement by amendment, and as mutually agreed upon for any future projects whether or not they are set forth in exhibits appended to this Agreement.

Section 2.4. "ALLOCATION OF OPERATION AND MAINTENANCE EXPENSE". The estimated annual Operation and Maintenance (O&M) Expense of the City shall be allocated by the City to the parties hereto as a combination of Fixed Expenses and Variable Expenses.

Fixed Expenses are the base costs required to operate the POTW independent of wastewater flows, and include such fixed operating costs as personnel, administration, equipment and facilities upkeep, heat, lighting, building maintenance, grounds

maintenance, etc. Fixed Costs for all facilities constructed as part of the Greater Eureka Wastewater Project shall be allocated the same as the proportional capacity share of the original Allocation of Capital Expense (City: 67.9%, District 32.1%) of the Greater Eureka Area Wastewater Project. Fixed Costs for all facilities constructed as part of any future projects or improvements that expand capacity of the POTW beyond that created by the Greater Eureka Wastewater Project shall be allocated in the proportional capacity share determined for each of those individual projects.

Variable Expenses shall be allocated in the same proportion that the total of each party's Volumetric Share of Flow bears to the total annual expense associated with the treatment of said wastewater loadings. Variable Expenses are costs associated with operating the POTW and include electrical costs for operating equipment, chemical and materials costs, biosolids processing and disposal costs, equipment repair or replacement due to use, etc.

For purposes of this Agreement, it is assumed that the discharges of wastewater by the parties into the City facilities have the following wastewater characteristics which shall be applied to flow measurements (as provided for in Section 3.3)

	<u>BOD mg/l</u>	<u>SS mg/l</u>
City	185	165
District	185	170

It is anticipated that the values herein may change from time to time and that they shall be adjusted by the City annually if necessary to reflect the appropriate wastewater characteristics discharged by the parties or as required to comply with the NPDES permit.

Section 2.5. "PAYMENT OF COSTS". District agrees to pay to the City its allocated share of the total budgeted annual operating expense, including debt service, in 12 equal installments payable prior to the 15th of each month of the fiscal year.

~~District agrees to pay to the City its allocated share of the total budgeted capital reserve contribution in 12 equal installments payable prior to the 15th of each month of the fiscal year.~~

District agrees to pay to the City its allocated share of capital expenditures, based on monthly billings of the City's actual capital expenses. Monthly billings shall be issued by the City by the 15th of the following month. Payment shall be made by the District within 30 days of receipt of the billing.

The City shall submit a final detailed statement of the true and correct amount of the annual operating expense to the District within five months after the close of the fiscal year. If the amount of the estimate was less than the true amount, as contained in the final statement, the District shall pay the City the balance within 30 days of receipt of the final detailed statement. If the amount of the estimate was more than the true amount, as contained in the final statement, the District may deduct the amount of the excess from the next monthly payment to the City, and may continue making deductions from the current year's estimate payments until they have recovered the amount of the excess.

Section 2.6 "FINANCING". Financing will be determined on project by project basis.

Section 2.7. "BUDGET AMENDMENT". In the event of an emergency or the occurrence of an unanticipated cost, City may adopt a budget amendment after notifying the District of the facts justifying the adoption of a budget amendment. Each party shall deposit its share of the budget amendment cost within thirty (30) days or mutually agreeable time from presentation of the budget amendment, unless the parties agree otherwise by notification.

Section 2.8 "DISTRICT USE OF SHARED FACILITIES". In addition to all other costs, District shall also pay to the City an amount equal to 3.0 percent of the City's annual operation and maintenance costs of wastewater collection and pumping as compensation for District's use of shared facilities as defined in Section 1.15 and shown in Exhibit D. This percentage may be revised from time to time as mutually agreed by City and District.

Section 2.9 "WASTEWATER RESERVE ACCOUNT." A wastewater capital reserve shall be established and maintained for facilities that are part of the Greater Eureka Area Wastewater Project (GEAWP), whether by original construction or by addition at a later date. The purpose of the wastewater capital reserve is to pay for emergency projects and/or repairs to GEAWP facilities that were not planned for in the normal five year planning cycle. This reserve shall remain separate from other reserve accounts established by either agency and shall be used solely for GEAWP facilities.

Target size for reserve

The target size of the wastewater capital reserve shall be **\$2,000,000**. HCSD shall be responsible for establishing and maintaining 32.1% of this amount, or **\$642,000**. The City of Eureka shall be responsible for establishing and maintaining 67.9% of this amount, or **\$1,358,000**.

Required contributions to reserve

If any portion of wastewater capital reserve is below the target amount at the beginning of a five-year rate cycle, contributions shall be budgeted and made until the reserve reaches the target amount. For this wastewater capital reserve, HCSD's annual contribution shall be **a minimum of \$43,380** and City of Eureka's annual contribution shall be **a minimum of \$91,757**. If any portion of the reserve is equal to or greater than the target amount at the beginning of a five-year rate cycle, no contributions need to be budgeted or made during that rate cycle. When below target, the reserve may also be replenished with any year-end operating surplus funds, at each agency's discretion.

Use of reserve

Use of wastewater capital reserve funds shall require approval by the Eureka City Council and the HCSD Board. However, in the event that the nature of the emergency requires immediate response in order to protect public health and safety or public infrastructure, that approval may occur as soon as possible after the fact, upon a full report by staff. Further, in the event that payment is due for emergency services prior to a Board meeting or Council meeting, District or City staff shall release funds as needed.

Custody and investment of reserve funds

HCSD shall maintain custody of the HCSD portion of the wastewater capital reserve. City of Eureka shall maintain custody of the City portion of the wastewater capital reserve. Capital reserve funds shall be maintained in separate accounts from other funds. Capital reserve funds shall be invested in conformance with the individual investment policy of each Agency. Interest earned on the capital reserve funds shall remain in the reserve funds.

Audit of reserve funds

An annual audit of the financial statements of the District and the City by independent certified public accountants shall be made each year. The wastewater capital reserve fund account shall appear distinctly in the audited financial statements of the District and the City in such a way that a review of those financial statements provides clear proof of the existence and balance of each agency's wastewater capital reserve account.

Restrictions

Capital reserve funds designated for the GEAWP facilities shall not be comingled with, or loaned to, other agency or City funds.

If the established relative shares (HCSD vs. City) require changes in the future, at the request of either agency this policy shall be reopened and amended as mutually agreed.

ARTICLE III – OPERATIONAL PROVISIONS

Section 3.1 “ADMINISTRATION BY CITY”. The City of Eureka shall be responsible for administering the Projects contemplated by this Agreement. Projects shall be administered by the City of Eureka in the same manner and with the same powers as

other City projects. This Agreement shall not create an agency separate and apart from the parties to this Agreement.

Section 3.2 "RESERVED CAPACITY RIGHTS".

- (a) Each of the parties hereto shall have Reserved Capacity Rights in the Greater Eureka Area Wastewater Project as listed in Exhibits B-1 & B-2, and Reserve Capacity Rights in any other new projects as specified in the project agreements for those project or listed in any other new exhibits added by amendment and attached hereto, and the City agrees to receive and treat discharges into the City's facilities up to the amount of the reserved capacity.
- (b) ADWF shall be used to calculate remaining available sewer capacity connections;
- (c) If at any time, any party to this Agreement determines that it has unused capacity in excess of its requirements, such additional capacity may be assigned by the party to any other public entity by written agreement subject to a right of first refusal by the parties to this Agreement. Absent such a written agreement, a party shall not exceed its total capacity rights, even if another party to the Agreement is not then currently exercising its full capacity rights. If a party exceeds its capacity rights, it shall immediately take action to reduce its use of the facilities and shall pay an increased Allocation of Capital Expense and fixed Operation and Maintenance Expenses reflecting the amount of the infringement on the Reserved Capacity Rights of the other party.
- (c) Subject to the conditions set out herein, any party to this Agreement may increase its sewage capacity rights and volumetric flow capacity by expansion of the project facilities, provided that party pays for all costs incurred in that expansion, including but not limited to all permitting, planning, construction and operation and maintenance costs per Article II of this Agreement. If the District elects to increase its capacity rights, such election shall be subject to the City's approval, which shall not be

unreasonably denied, and if approved, the City will take the steps necessary to effectuate the expansion, subject to the District providing payment to the City for all actual costs, before the City incurs such costs, including but not limited to administrative staffing costs for processing and implementing the expansion.

- (d) The City may reasonably deny its consent under subparagraph (a) above, for reasons relating to compliance with the NPDES permit, impacts to the City's ability to make full and efficient use of its rights to capacity in the system, additional costs or limits on the City's ability to use the system in the short or long-term, or related reasons. Reasonable denial under subparagraph (a) is not intended to encompass reasons unrelated to the operation or capacity or long-term viability of the system, such as impacts to other public services or land use decisions (eg fire, police, traffic, water supplies, or other unrelated issues of community concern, which concerns will be dealt with under legal and policy mechanisms outside the context of this agreement).

Section 3.3 "FLOW METERING". The District and City shall install and maintain in good working order meters to measure the total flow of sewage originating from their respective systems and flowing to or into the POTW, and to report said flows to the parties hereto on a monthly basis. Meters shall be tested and calibrated as necessary at least once every three years and records shall be sent to City and District respectively. If either party feels the need for more frequent calibration, it could be implemented by mutual consent.

Section 3.4 "FLOW LIMITATION". Each of the parties hereto agrees to limit the rate of flow of sewage to or into the POTW originating from each party to its Reserved Capacity Right and to exclude from said wastewater flows any substance the presence of which in the wastewater flow would cause the City to fail to comply with wastewater discharge requirements established by any governmental agency having jurisdiction therein.

Section 3.5 "FUTURE EXPANSION OR ADDITIONS". Should the City determine it necessary in the future to enlarge or add to the POTW facilities provided for herein or as requested by District, the cost of such expansion or additions shall be borne proportionately by the parties requiring or requesting such expansion or additions. Funds for the capital costs of such expansions or additions shall be in accordance with a supplemental agreement to be hereafter entered into.

Section 3.6 "REGULATORY CHANGES". Should regulatory changes cause a change in wastewater treatment standards or methodology as a result regulatory changes or legal requirements exceeding those specified in the original NPDES Permit, the parties hereto agree that they will participate proportionally in the additional capital costs and annual operating expense as mutually agreed.

Section 3.7 "QUALITY OF WASTEWATER". The quality of all wastewater delivered to City's system shall be in conformity with all requirements of this Agreement and as specified by the Regional Water Quality Control Board. District agrees to enter into an agreement with the City to adopt an Industrial Waste Pretreatment Program as required by the North Coast Regional Water Quality Control Board and the U.S. EPA.

Section 3.8 "EXTRATERRITORIAL WASTEWATER SERVICE". Nothing contained in this Agreement shall affect the right of the parties hereto to contract for the treatment and disposal of wastewater originating outside the geographical areas upon which the Reserved Capacity Rights of said parties are based or to extend wastewater collection services to territory outside said areas in accordance with Section 3.2.

Section 3.9 "ANNEXATION". Unless agreed to otherwise by both parties to this agreement, in writing, if a party to this Agreement annexes all or any portion of the service area of another party to this Agreement, the portion of the POTW servicing the area annexed shall remain within the pre-existing service area (i.e., stay in the pre-annexation status of being in the District or City portion of the system) including the capacity rights. All rights and obligations granted or imposed in this agreement shall remain unchanged.

Section 3.10 "BOUNDARY AREA SERVICE". In boundary areas where customers of one entity would be more logically served by the facilities of the other, a service connection may be made by and in accordance with rules, regulations and fees of the entity providing said service. The prior written approval by the entity within whose jurisdiction the service is located shall be obtained.

Section 3.11 "LIMITATIONS ON QUANTITY OF WASTEWATER". Each of the parties hereto agrees to limit the flow rate, biochemical oxygen demand, and suspended solids of wastewater flowing to or into the GEAWP and any expansion added by amendment to this agreement originating from each party to its Reserved Capacity Right. The parties hereto shall have the power to regulate wastewater flowing to or into the GEAWP and any expansion added by amendment to this agreement from any party hereto which exceeds the Reserved Capacity Right of said party. The City shall have the power to prohibit the discharge of any substance to the GEAWP and any expansion added by amendment to this agreement in a concentration which exceeds the maximum limit that may have been established by resolution or pretreatment ordinance of the City and District as necessary to safeguard the wastewater treatment processes or facilities of the City.

Section 3.12 "LOCATION AND DESCRIPTION OF SERVICE CONNECTIONS'. Delivery of wastewater will be made to City's wastewater system through connections to City's wastewater collection and disposal system at the locations as shown on Exhibit A attached hereto. Additional connections to the City's system may be made upon such terms and conditions as may hereafter be agreed to by the parties. District shall retain ownership, control, and legal responsibility for wastewater until it reaches the above mentioned connection points.

Section 3.13 "INDEMNIFICATION". District agrees to defend, indemnify and hold the City harmless from any and all claims, demands, obligations, and liabilities of any and every nature, including reasonable attorneys' fees, however the same may be caused resulting from or arising out of the transportation of their wastewater to said points of

connection, except for the City's gross negligence or willful misconduct. City agrees to hold the District harmless from any and all claims, demands, obligations, and liabilities of any and every nature however the same may be caused resulting from or arising out of the City's transportation of the City's wastewater in portions of the POTW that are not shared facilities and are under the exclusive control of the City, or those arising from the City's gross negligence or willful misconduct.

Section 3.14 "CONNECTION ALLOCATIONS". Whenever a limitation on wastewater connections is imposed by State or Federal authorities, the City shall allocate the wastewater connections on a first come first serve basis providing neither agency shall exceed their Reserved Capacity Rights.

Section 3.15 "CAPACITY REDUCTIONS". If for any reason the actual capacity of the wastewater treatment facilities should be less than the design capacity, then in such event the deficiency shall be allocated among the parties in proportion to their Reserve Capacity Rights.

ARTICLE IV – MISCELLANEOUS

Section 4.1 "OWNERSHIP". Title to any real property or interest therein acquired by the City pursuant to this Agreement and title to the GEAWP and any expansion added by amendment to this agreement shall be vested in the City.

Section 4.2 "NOTICES". Notices hereunder shall be sufficient if delivered to:

City – City Manager, City of Eureka, 531 K Street
Eureka, California 95501

District – General Manager, Humboldt Community Services District,
Post Office Box 158, Cutten, California 95534

Section 4.3 "CONSENT". Whenever in this Agreement any consent or approval is required, the same shall not be unreasonably withheld.

Section 4.4 "LAW GOVERNING". This Agreement is made in the State of California under the Constitution and laws of such State and is to be so construed.

Section 4.5 "5-YEAR PERIODIC REVIEW AND REVISION, AMENDMENTS".

Recognizing that it is difficult to simply terminate an Agreement of this nature, given the permanence of the shared facilities, and recognizing that all agreements become out of date and to some degree stale over time, the Parties shall review this Agreement at least once every five years, and update it as needed. Each part is obligated to apply diligence and good faith in resolving any issues over any party's desire for a revision or update to the Agreement. This Agreement may be amended more frequently, as mutually desired, except as limited by applicable regulations or laws of any jurisdiction having authority, by one or more supplemental written agreements executed by the parties hereto as required in order to carry out all of the provisions of this Agreement, for any purpose including adjustment of capacity rights, addition of new parties (including any county service areas or other legal entities or taxing areas which may be created in pursuance of the purposes of this Agreement), or for any other purpose.

Section 4.6 "MODIFICATION BY MUTUAL NEGOTIATIONS". Except as otherwise expressly provided herein, at any time during the term of this Agreement or any extension thereof, the City and District agree, if requested by any party, to conduct mutual negotiations in good faith on the subject of any modification hereof which may be desired by either party hereto, and pursuant to such negotiations, this Agreement or any of the exhibits attached hereto may be amended by mutual written consent of the parties.

Section 4.7 "PARTIAL INVALIDITY". If any one or more of the terms, provisions, sections, promises, covenants or conditions of this Agreement shall to any extent be adjudged invalid, unenforceable, void or voidable for any reason whatsoever, by a court of competent jurisdiction, each and all of the remaining terms, provisions, promises, covenants and conditions of the Agreement shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law.

Section 4.8 "FORCE MAJEURE". City shall not be liable for any breach of the terms and conditions by it to be performed hereunder resulting from acts of God, earthquake, fire, strike, public calamity, or other circumstances beyond its control; provided, however, City agrees to make reasonable efforts to perform or cause this Agreement to be performed at all times during the term hereof.

Section 4.9 "REMEDIES". Each of the parties hereto are firmly bound and obligated to perform each and every, all and singular, the provisions of this Agreement, in the manner and to the extent as herein provided, and that should any default be made in the payment of any amounts due, or any of the terms herein mentioned are not complied with, any party may declare that a breach or forfeiture of the provisions has occurred. If a party hereto claims that another party hereto has breached or failed to comply with the term of this Agreement, the party making such claim shall give the alleged breaching party, a thirty (30) day written notice demanding compliance with the provision violated without further delay. If a breach continues beyond the thirty (30) day period specified in the notice, the party aggrieved may bring an action for breach of the provision violated and a declaration of the right and privileges of each of the parties under the terms of this Agreement.

Section 4.10 "MANDATORY, NON-BINDING MEDIATION." In the event of a dispute over the interpretation, compliance, or performance under this agreement, at the election of either party, the dispute will be subject to non-binding mediation to resolve the dispute. In such event, both parties shall be obligated to enter into mediation in good faith and pursue it promptly and diligently to its end before resorting to litigation to resolve the dispute

Section 4.11 "ENFORCEMENT BY CITY. DEFAULT IN PAYMENT". Each of the parties hereto is hereby authorized to take any or all legal or equitable actions including, but not limited to, specific performance necessary or permitted by law to enforce this Agreement. If default shall be made in the due and punctual payment of any amounts required to be paid under terms of this Agreement and such default shall have continued for a period of

thirty (30) days, or if default shall be made by any party hereto in the observance of any of the covenants, agreements or conditions on its part in this Agreement and such default shall have continued for a period of sixty (60) days after such party shall have been given notice in writing by the affected party of such default, such notified party shall be deemed to be in default under this Agreement and it shall be lawful for each of the parties to exercise any and all remedies available pursuant to law or granted pursuant to this Agreement. Upon any such default, City in addition to any other rights and remedies it may have at law, shall have the option, without terminating this Agreement, to collect each payment for expenses provided for herein as such payment becomes due and to enforce any other term or provision of this Agreement to be kept or performed by such party. Each of the parties hereto shall have the right to institute an action for damages sustained as a result of any such default and shall have the right by mandamus or other proceeding at law or in equity to enforce its rights against such party and to compel such party and any officers or employees thereof to perform and carry out their obligations and duties under this Agreement. In the event of any such default, the Fiscal Agent designated pursuant to any covenant with holders of bonds issued by City pursuant to this Agreement shall have the right to enforce for the benefit of the holder of the bonds the rights of City under this Agreement and, to that end, shall have the right to institute any action or other proceeding at law or in equity which City could institute under this section.

Section 4.12 "FORBEARANCE NO WAIVER" The forbearance or failure of a party to pursue any remedy available to it for violation of any term or breach of this Agreement shall not constitute waiver of any of the party's rights under this Agreement or applicable law.

Section 4.13 "NO THIRD PARTIES BENEFITED" This Agreement is made and entered into for the benefit of the parties hereto, the holders of any bonds issued by City in pursuance of this Agreement and the fiscal Agent designated pursuant to any covenant by City with such bond holders and their permitted successors and assigns, and no other persons or entities shall have any right of action hereon.

Section 4.14 "TERM". This Agreement shall be effective on the date hereof and shall continue in effect as long as there is shared use of facilities in the GEAWP and any expansion added by written amendment to this agreement and new projects as added by written amendment.

Section 4.15 "SUCCESSORS; ASSIGNMENT". This Agreement shall be binding upon and shall insure to the benefit of the successors of the parties. Except to the extent expressly provided herein, no party may assign any right or obligation hereunder without the consent of the others.

Section 4.16 "GRANT CONDITIONS". Each of the parties hereto agrees that the City shall be empowered, in any case in which the City is a party to a grant contract with the State or the United States of America, to impose to the extent permitted or required by law on each of the parties hereto the duty of compliance with any conditions in such grant contract and each party agrees to comply with such conditions by enactment of appropriate ordinances, regulations or otherwise.

Section 4.17 "SECTION HEADINGS". All section headings are for convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement.

Section 4.18 "DATE OF AGREEMENT". City is hereby authorized to date this Agreement to correspond with the date on which the last party hereto authorizes its execution.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested by their proper officers thereunto duly authorized, and their official seals to be hereto affixed, as follows:

ATTEST:

City Clerk

ATTEST:

Humboldt Community Services District

APPROVED AS TO CONTENT:

City Engineer

APPROVED AS TO CONTENT:

HCSD District Manager

APPROVED:

City Manager

APPROVED:

HCSD President, Board of Directors

APPROVED AS TO FORM:

City Attorney

APPROVED AS TO FORM:

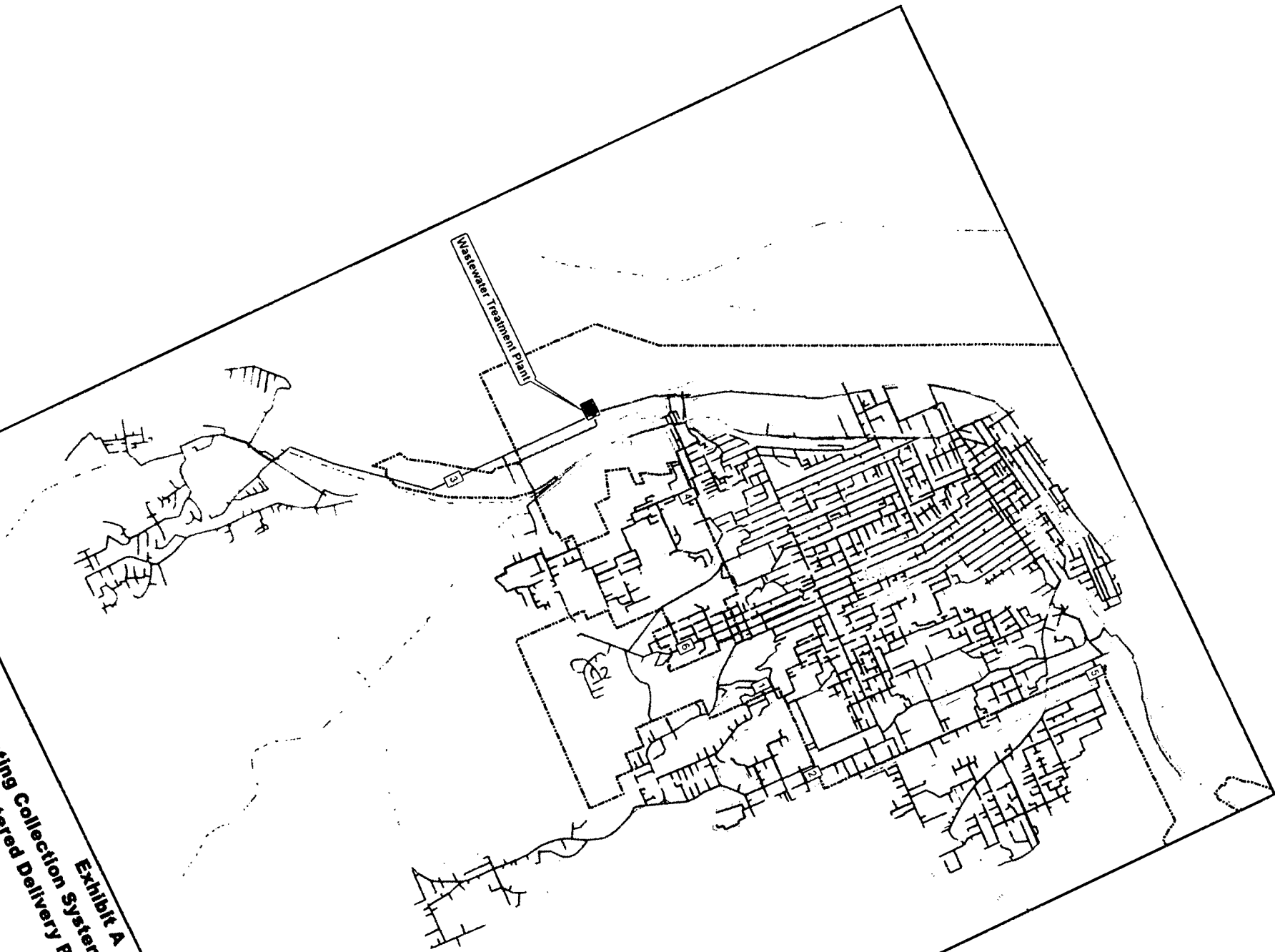
HCSD Attorney

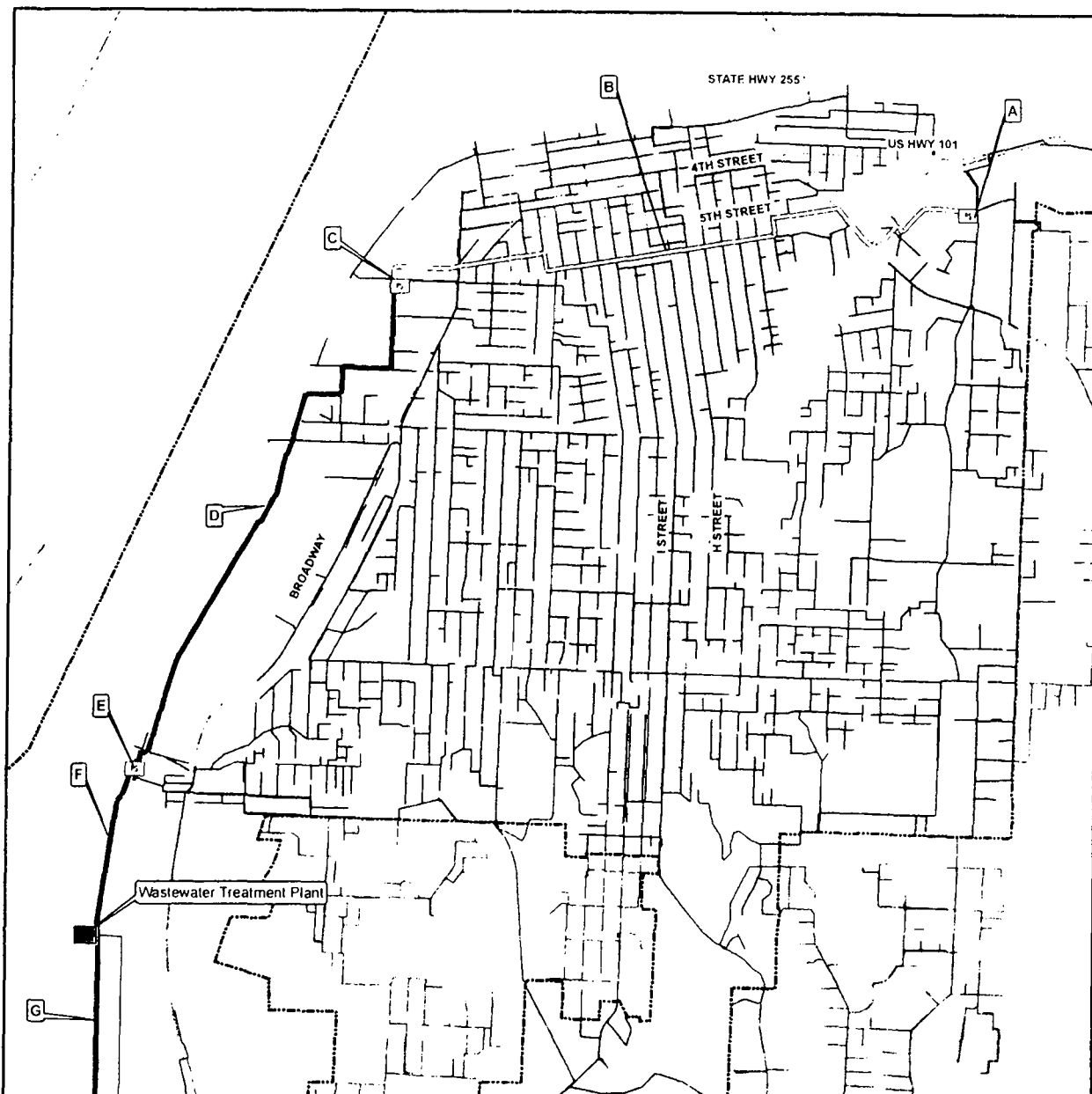


Exhibit A
Existing Collection System, Service Areas,
and Metered Delivery Points from HCSD

- Legend**
- Flow Monitors
 - Eureka City Limits
 - HCSD Sewers
 - City of Eureka Sewers
 - Major Road

HCSD Metered Delivery Points	
1	Unit
2	Location
3	Service Address
4	Area
5	Flow
6	SI
Unmetered delivery points are shown on Exhibit D	





Cross-Town Interceptor Components		Peak Wet Weather Flow (MGD)				
		Design Criteria	City of Eureka		HCSD	
			Amount	Percent	Amount	Percent
A	Hill St Pump Station	7.59	4.04	53.2%	3.55	46.8%
B	Hill St Washington St Interceptor	7.59	4.04	53.2%	3.55	46.8%
C	Washington St Pump Station	18.7	18.7	100%	0	0.0%
D	Washington St to McCullen St Interceptor	26.29	22.74	86.5%	3.55	13.5%
E	McCullen St Pump Station	4.92	3.09	62.8%	1.83	37.2%
F	McCullen St to WWTP Interceptor	31.21	25.83	82.8%	5.38	17.2%
G	South Broadway Interceptor	1.58	0	0.0%	1.58	100%

Exhibit B-1
Cross-Town Interceptor
Proportional Capacity Share



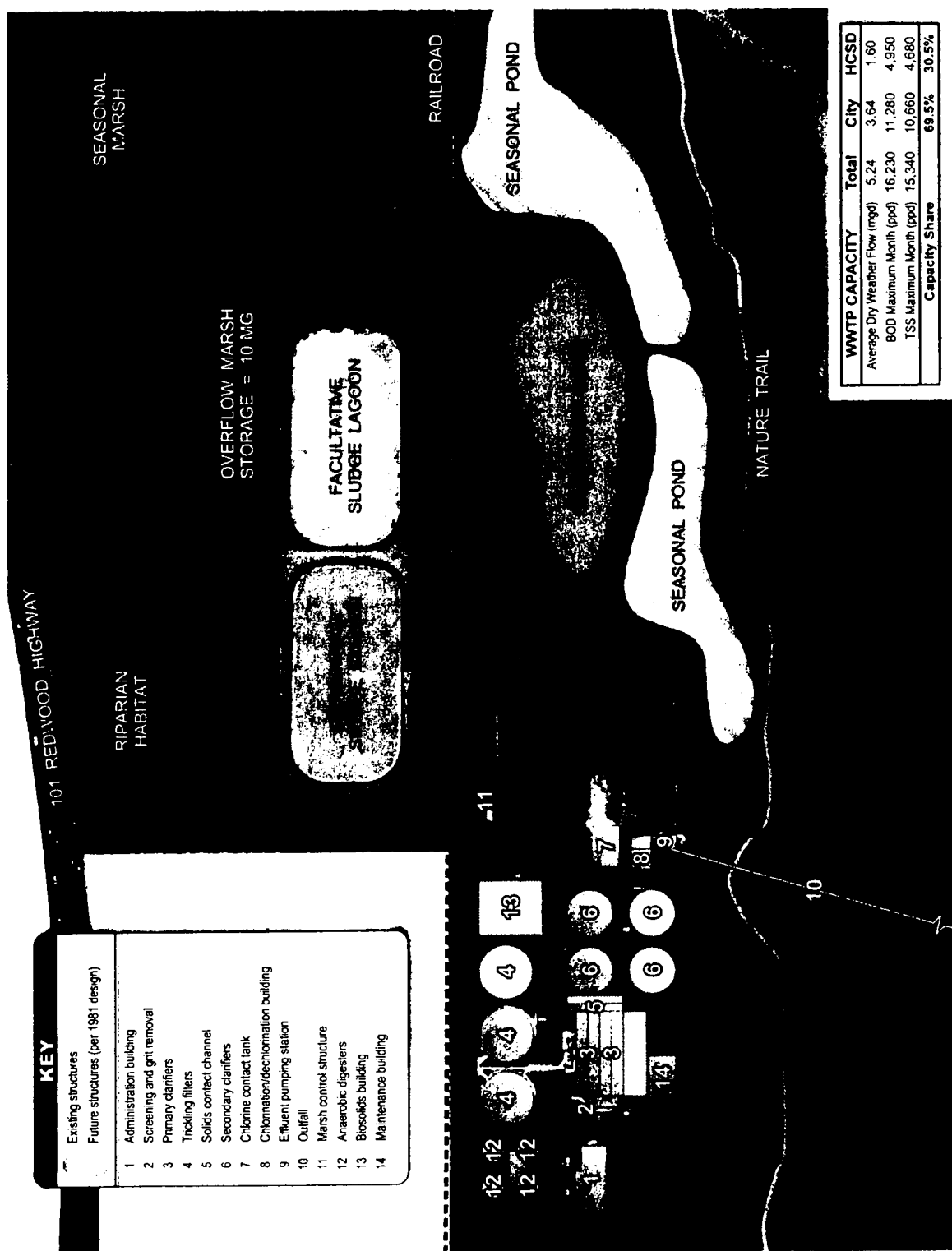
BROWN & CALDWELL
Environmental Engineers & Consultants



Legend

Cross Town Interceptor

- Cross Town Interceptor
- Pump Stations
- City of Eureka Sewers
- HCSD Sewers
- Eureka City Limits
- Major Road



KEY

- Existing structures
- Future structures (per 1981 design)
 - Administration building
 - Screening and grit removal
 - Primary clarifiers
 - Trickling filter
 - Solids contact channel
 - Secondary clarifiers
 - Chlorine contact tank
 - Chlorination/dechlorination building
 - Effluent pumping station
 - Outfall
 - Marsh control structure
 - Anaerobic digesters
 - Biosolids building
 - Maintenance building

WWTP CAPACITY	Total	City	HCSD
Average Dry Weather Flow (mgd)	5.24	3.64	1.60
BOD Maximum Month (ppd)	16,230	11,280	4,950
TSS Maximum Month (ppd)	15,340	10,660	4,680
Capacity Share	69.5%	30.5%	

Exhibit B-2
Elk River Wastewater Treatment Plant
Proportional Capacity Share

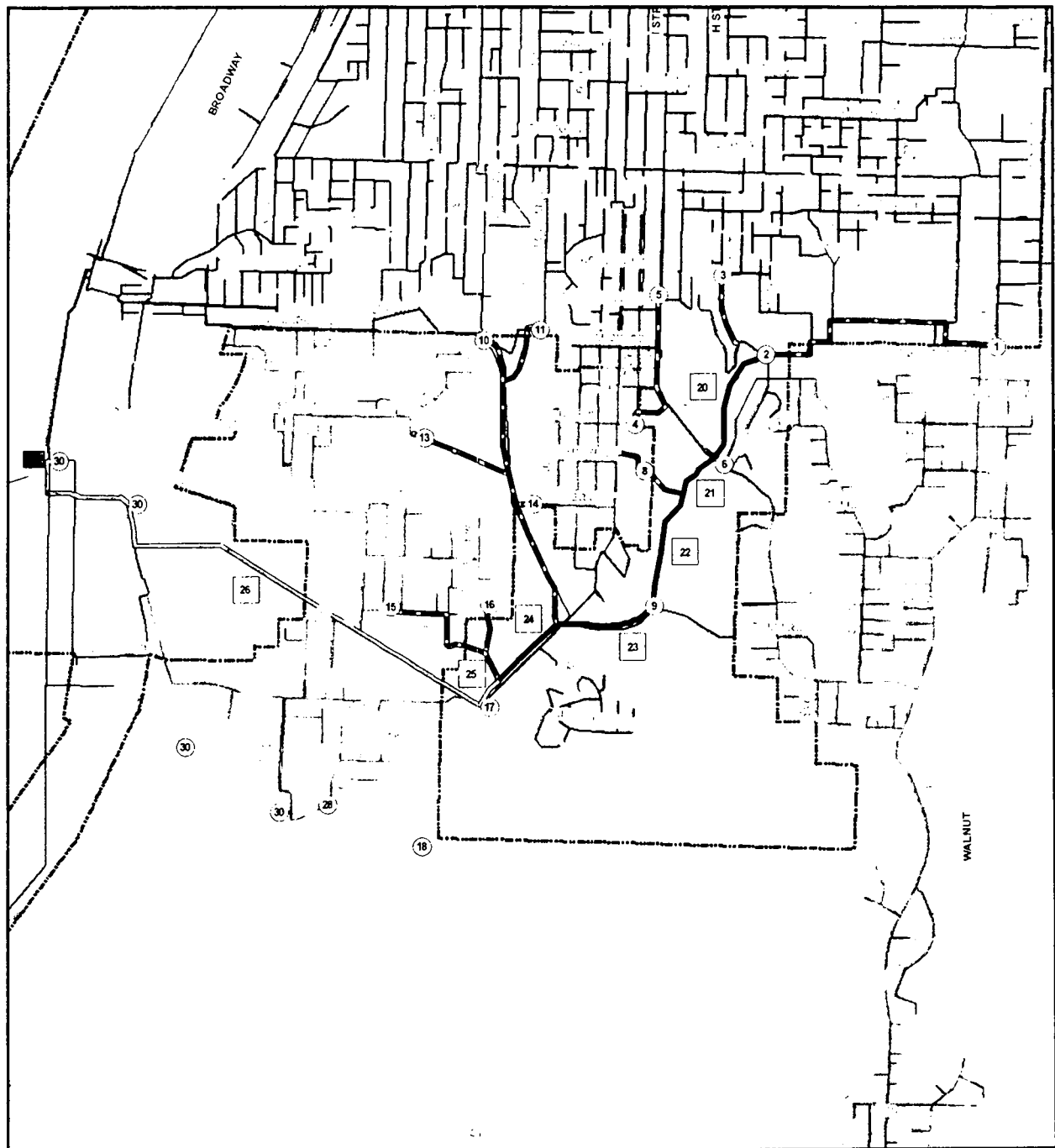


Exhibit C Martin Slough Proportional Capacity Share Exhibit

(See Back Of This Exhibit For Flow Information)



**BROWN &
CALDWELL**
Environmental Engineers & Consultants



Legend

Martin Slough Interceptor

- 20
- 21
- 22
- 23
- 24
- 25

26 Force Main

Martin Slough Collector Sewer

Eureka City Limits

Existing HCSD Sewers

Existing City of Eureka Sewers

Major Road

[illegible][illegible]

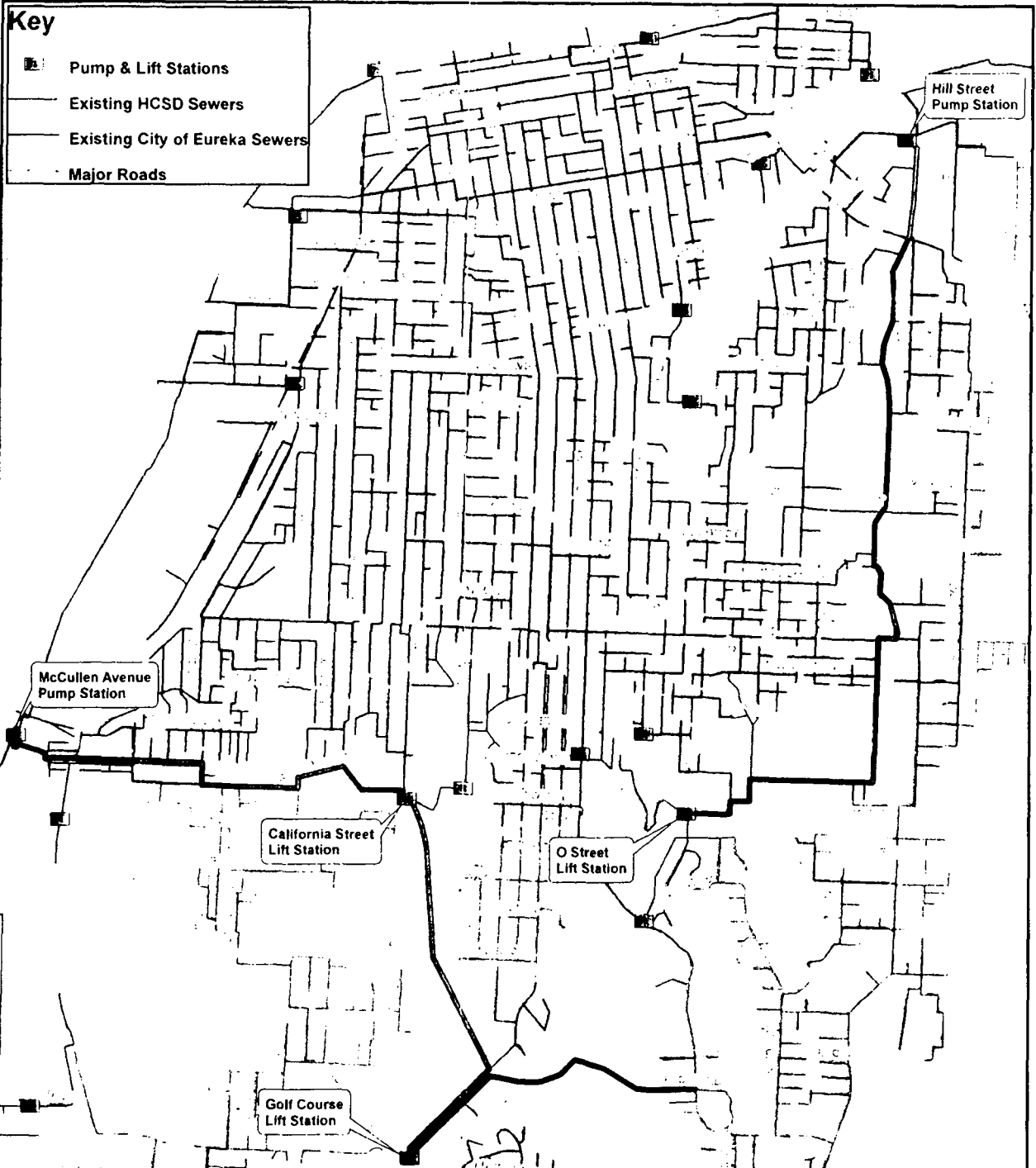
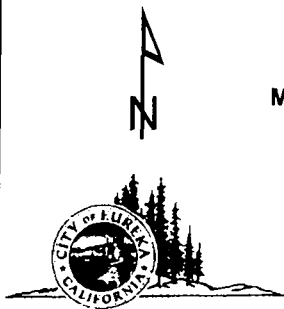


Exhibit D
Gravity Collection Sewer - Shared Components
and Unmetered HCSD Connection Points
 (See Back Of This Exhibit For Capacity Share Information)



McCullens Sewer

California St. Lift Station

- Reach 1
- Reach 2
- Reach 3
- Reaches 4 & 6
- Reaches 5 & 7
- Reach 8
- Reach 9

McCullen Ave. Pump Station

Second Slough Sewer

O St. Lift Station

- Reach 1
- Reach 2
- Reach 3
- Reach 4
- Reach 5
- Reach 6
- Hill St. Pump Station

Leslie Road Sewer and Golf Course Lift Station and Force Main

Golf Course Lift Station

— Leslie Rd. Sewer

— Golf Course Lift Station and Force Main

California Street Lift Station

EXHIBIT D - SHARED WASTEWATER FACILITIES

Proportional Use per Reach:

NAME	DESCRIPTION	PROPORTIONAL USE ⁵ (based on 20-year storm flows) as of December, 2008		FLOWS (gpm) ^{1,5}		Revised Flows (gpm) (resulting from future flow diversions into Martin Slough Interceptor)		REVISION DATE	NOTES
		City	District	City ²	District ²	City	District		
Second Slough Sewer	Gravity Sewer								
Reach 1	12" - Madrone to Harris St.	49%	51%	1019	1051				
Reach 2	12" - Harris to Russ St.	63%	37%	1825	1051				
Reach 3	15" - Russ to Trinity St.	69%	31%	2380	1051				
Reach 4	18" - Trinity to Del Norte St.	75%	25%	3089	1051				
Reach 5	24" - Del Norte to Myrtle Ave.	79%	21%	3924	1051				
Reach 6	28" - Myrtle to Hill St. P.S.	64%	36%	5139	2901				
McCullens Sewer	Gravity Sewer								
Reach 1	8" (pressure) - California L.S. to Silva & Union (at SS MH # 881)	73%	27%	931	350				
Reach 2	12" - Silva & Union to McCullens & Broadway (SS MH # 881 to # 1496)	74%	26%	995	350				
Reach 3	10" - McCullens & Iowa to McCullens & Broadway (SS MH # 1483 to # 1497)	6%	94%	36	590				
Reach 4	10" - to West side of McCullens & Broadway (SS MH # 1497 to # 1498)	37%	63%	345	590				
Reach 5	15" - to West side of McCullens & Broadway (SS MH # 1496 to # 1495)	75%	25%	1046	350				
Reach 6	15" - West side of McCullens & Broadway to Broadway Trailer Court (SS MH # 1498 to # 1494)	37%	63%	350	590				
Reach 7	18" - West side of McCullens & Broadway to Broadway Trailer Court (SS MH # 1495 to # 1494)	76%	24%	1088	350				
Reach 8	15" - Broadway Trailer Court to Train tracks (SS MH # 1494 to # 1490)	61%	39%	1460	940				
Reach 9	15" to 18" to 24" - to McCullens P.S. (SS MH # 1490 to P.S.)	69%	31%	2130	940				
		PROPORTIONAL USE (based on EDU count)		EDU's					
		City	District	City	District				
O Street Lift Station³		14%	86%	232	1422				
Leslie Road Sewer⁴		3%	22%	21	155				
Golf Course Lift Station & Sewer³		46%	54%	243	290				
California Lift Station	(Same flow as Reach 1 above)	73%	27%	931	350				

¹ 20-year Storm Flows were calculated by Brown & Caldwell's flow model (Phase 1 Facilities Plan dated Feb. 2008) based on metered flows.

² HCSD flows were calculated at their respective meter by Brown & Caldwell's flow model. City flows are the difference between total flows and HCSD flows.

³ Percentages based on EDU values taken from "Summary of Service Area Contributors" (SHN, 2004) and Exhibit C

⁴ Percentage use based on use of maximum flow capacity (400 gpm) of the line: City 21 EDU (12 gpm)=3%; HCSD 155 EDU (87 gpm)=22% (from Leslie Rd Flow Diversion Project)

⁵ After construction of the Martin Slough Interceptor and flows are diverted District and City will retain their historical proportional use flow capacity share rights as shown.

MEMORANDUM

DATE: March 18, 2011

TO: Michael Knight, Assistant City Manager
City of Eureka

FROM: Amrit S. Kulkarni
Peter S. Hayes

RE: **Agreement Between The City of Eureka and Humboldt
Community Services District For Regional Wastewater Treatment**

This memorandum analyzes whether the proposed “Agreement Between the City of Eureka and Humboldt Community Services District for Regional Wastewater Treatment” (the “Agreement”) may be approved without environmental review under CEQA.

We have previously recommended (by separate e-mail, dated March 17) that the Agreement be modified, to add a sentence in Section 1.11 (defining “Proportional Capacity Share”) to wit: “This Agreement shall not be interpreted as altering ‘Proportional Capacity Share,’ as defined herein, as it exists at the time of formation of this Agreement.” We think that, with that clarifying revision, the remainder of the Agreement straightforwardly covers inter-agency cooperation for continued operation and maintenance of the existing wastewater treatment system and plant, and inter-agency financing thereof.

With the Agreement so revised, we think there are at least two potential grounds for the City to determine that approval of the proposed Agreement does not require environmental review under CEQA. The City may want to consider using both of those bases, as alternatives – a kind of “belts and suspenders” approach to finding that approval of the Agreement does not require CEQA review. Alternatively, we think the City could decide to rely solely on the “categorical” exemption under CEQA Guidelines section 15301 (discussed below) as sufficient grounds for determining that no CEQA review is required for approval of the Agreement.

To: Michael Knight, Assistant City Manager
From: Amrit S. Kulkarni
Peter S. Hayes
Re: Agreement Between The City of Eureka and Humboldt Community Services District For Regional Wastewater Treatment
Date: March 18, 2011
Page: 2

The two potential grounds we have identified for determining that no CEQA review is required for approval of the Agreement are:

(1) Categorical/Statutory Exemptions

(a) Determination that the Agreement is “categorically exempt” from CEQA, under the exemption for “Existing Facilities.” We think a “categorical exemption” under the CEQA Guidelines provides strong grounds for determining approval of the Agreement to be exempt from CEQA review: CEQA Guidelines section 15301, for “existing facilities.” That exemption, under the language of the Guidelines, is for “the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency’s determination.”

Guidelines section 15301 provides a long list of examples of projects that may be considered exempt from CEQA under that section. None of the listed examples match up precisely with approval of an Agreement such as the one proposed here, for continued agency cooperation/financing for operation and maintenance of an existing wastewater treatment system. However Guidelines section 15301 provides that its list of project is non-exclusive, and we read the exemption, by its plain language, as suitable for a determination that the Agreement is exempt from CEQA review, since the Agreement is one for continued operation and maintenance of existing facilities, where there is no “expansion of use” of those facilities without a future (and as yet un-proposed) amendment to the Agreement.

Perhaps the case closest to being on point to support our conclusion in this regard is *Turlock Irrig. Dist. v. Zanker* (2006) 140 Cal.App.4th 1047, 1065, in which a court held that Guidelines section 15301 applied to make categorically exempt from CEQA review the adoption of water conservation rules governing the delivery of water by an existing water system.

It is noteworthy that Guidelines section has been found to exempt a project from CEQA review even if the “existing operation” in question has never before received CEQA review. In *Bloom v. McGurk* (1994) 26 Cal.App.4th 1307, the court upheld use of this categorical exemption for a new permit (occasioned by the enactment of new regulatory requirements) for continued (i.e., not expanded) operation and maintenance of an existing medical waste treatment facility, even though the facility had not been given prior CEQA review. We mention this case as we understand that the City is not entirely sure of the degree to which the Wastewater treatment system has been the subject of prior CEQA review.

To: Michael Knight, Assistant City Manager
From: Amrit S. Kulkarni
Peter S. Hayes
Re: Agreement Between The City of Eureka and Humboldt Community Services District For Regional Wastewater Treatment
Date: March 18, 2011
Page: 3

(b) Determination that the Agreement is “statutorily exempt” from CEQA, under the exemption for “Rates, tolls, fares and other charges.” Another *possible* – but only *secondary* – grounds for finding approval of the Agreement exempt from CEQA is that identified by City staff in an untitled document forwarded to us for review: The “statutory” exemption under Public Resources Code section 21080(b)(8) and Guidelines section 15273, for “rates, tolls, fares, and other charges” which an agency finds are for the purpose of (*inter alia*) “[o]btaining funds for capital projects, necessary to maintain service within existing service areas.”

We do not feel that this “statutory” exemption under Public Resources Code section 21080(b)(8) and Guidelines section 15273 fits approval of the Agreement as well as does the “categorical” exemption under Guidelines section 15301 – primarily because the Agreement, although it does provide for inter-agency cost sharing, etc., does not plainly provide for imposition of any “rates, tolls, fares [or] other charges” Therefore, we recommend use of the statutory exemption under Public Resources Code section 21080(b)(8) and Guidelines section 15273 only as a “back-up” ground for an exemption determination. Therefore, even if this exemption is used by the City, we do not recommend that it be used unless the categorical exemption under Guidelines section 15301 is also used.

(c) CEQA procedure for determining an approval to be “exempt.” CEQA does not provide any particular procedure for an agency determination that a particular approval is exempt from CEQA. In particular, CEQA does not require that a public hearing be held for the specific purpose of determining that an approval is subject to CEQA (although a public hearing may potentially be required under statute or local ordinance *other than* CEQA). Nor does CEQA require that an agency adopt “findings” in support of a determination that an approval is exempt from CEQA, or even that the agency make an “explicit” finding that an approval is exempt before granting the approval.

Nevertheless, if the City decides to rely upon Guidelines section 15301 (“existing facilities”) to determine that approval of the Agreement is not subject to CEQA, we recommend that the staff report for the item, and any approval resolution, make clear that the Agreement provides for “negligible or no expansion of use” of the wastewater treatment system and facilities that are covered by the Agreement.

If the City determines to rely upon the “categorical” exemption under Guidelines section 15301, or upon that categorical exemption in conjunction with the “statutory” exemption under Public Resources Code section 21080(b)(8) and Guidelines section 15273, then the City may obtain a short, 35-day “statute of limitations” period for legal challenges to the determination of exemption, by filing a Notice of Exemption under Public Resources Code sections 21108 and 21152, and Guidelines section 15062. There is no particular time period

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Re: Agreement Between The City of Eureka and Humboldt Community Services District For Regional Wastewater Treatment
Date: March 18, 2011
Page: 4

in which a Notice of Exemption must be filed, although the 35-day limitations period does not begin running unless and until such a Notice is filed. If no such Notice of Exemption is filed, the statute of limitations period for challenging approval of the Agreement under CEQA would likely be 180 days from approval, the “default” limitations period under CEQA.

(2) Determination that the Agreement is not a “project” to which CEQA applies.

In addition to determining that approval of the Agreement is exempt as discussed above, the City may also and additionally want to determine that no CEQA review is required on the grounds that approval of the Agreement is not a “project” to which CEQA requires. Like the statutory exemption for “rates, fares, tolls and other charges,” however, we recommend that this ground be relied upon only as a “back-up” to an exemption under Guidelines section 15301, for “existing facilities.”

You have shared with us a memo from Paul A. Brisso to Steven Davidson, dated November 29, 2010, under which Mr. Brisso analyzes approval of the Agreement as not being a “project” subject to CEQA. Mr. Brisso, in support of his conclusion, analogizes approval of the Agreement to the situation in *Kaufman & Broad-South Bay, Inc. v. Morgan Hill Unified School District* (1992) 9 Cal.App.4th 464. That case held that formation of a community facilities district was not a “project,” inasmuch as formation of the district only provided a funding source, without any committing the agency to any identified object of that funding. Mr. Brisso argues that the Agreement, like the district formation in *Kaufman & Broad*, is a financing agreement that does not “dictate how funds will be spent, or in any way narrow the field of options and alternatives available” (quoting from *Kaufman & Broad*.)

We do not necessarily disagree with Mr. Brisso’s opinion. However, we are not convinced that it is wise for the City to rely *solely* (i.e., 100%) on a determination that the Agreement is not a “project.” We think it may potentially be possible to argue, for example, that the Agreement, unlike the district formation at issue in *Kaufman & Broad*, does “dictate how funds will be spent” – namely, it provides for funds to be spent on operation and maintenance of the Wastewater Treatment system and plant. Since CEQA defines a “project” as an action that has the potential to affect the environment (Pub. Res. Code section 21065), and since the object of the Agreement (i.e., operation and maintenance of a wastewater treatment plant) has at least the theoretical potential to affect the environment, we therefore do not recommend that the City rely *solely* on a determination that approval of the Agreement is not a “project” under CEQA.

To: Michael Knight, Assistant City Manager
From: Amrit S. Kulkarni
Peter S. Hayes
Re: Agreement Between The City of Eureka and Humboldt Community Services District For Regional
Wastewater Treatment
Date: March 18, 2011
Page: 5

As with exemptions, CEQA does not prescribe a particular procedure for determining an action to be not a "project." However, sole reliance on a determination that approval of the Agreement is not a "project" would not clearly appear to permit the City to file a Notice of Exemption, and thereby obtain the short 35-day limitations period on challenges to approval of the Agreement under CEQA.

Conclusion

Therefore, we recommend that the City base a decision to approve the Agreement without CEQA review *primarily* on the categorical exemption for "existing facilities" under Guidelines section 15310. In addition, but only *secondarily* (and optionally), the City may decide also to base its determination on the statutory exemption for "rates, tolls, fares and other charges" Public Resources Code section 21080(b)(8) and Guidelines section 15273, and/or on a determination that approval of the Agreement is "not a project" under CEQA.

PSH:psh

1612917.1

AGENDA SUMMARY**RE: MARTIN SLOUGH INTERCEPTOR PH-1
FINAL EASEMENT ACQUISITIONS****FOR AGENDA DATE: APRIL 19, 2011****AGENDA ITEM No.:**

17

RECOMMENDATION:

1. Authorize staff to complete negotiations and execute agreements with the last two landowners (Barnum & Lundblade) of the remaining four properties for Phase 1 of the Martin Slough Interceptor project for the purchase of permanent and temporary construction easements.
2. Approve an expenditure of up to \$150,000 in Wastewater Funds for the acquisition of four permanent easements and four temporary construction easements (eight total) for the Martin Slough Interceptor Project Phase 1.
3. Authorize the City Manager to execute the acquisition documents for the eight remaining easements for the Martin Slough Interceptor Project Phase 1.

SUMMARY:

On March 15, 2011 Council authorized staff to complete the purchase of seventeen permanent and temporary construction easements from nine property owners for Phase 1 of the Martin Slough Interceptor project. Staff has continued working with the two remaining property owners, Lundblade and Barnum, to finalize negotiations for the purchase of the remaining eight easements which comprise one third of the project length. The final purchase price is estimated to fall within the \$150,000 estimate stated above which is based on two previous appraisals and includes additional compensation for the taking of mature trees, reimbursement for the landowners' costs for legal and professional engineering consultation, and for the loss for one season of pasture land used for cutting hay.

Prepared by: Kurt Gierlich, City Engineer

(Continued on page 2)

FISCAL IMPACT:

Authorize staff to appropriate up to \$150,000 from Wastewater Reserves to account 512-47000-7516-PJ 455-512

DEPARTMENT HEAD SIGNATURE:Mike Knight

Mike Knight

Assistant City Manager

CITY MANAGER SIGNATURE:David W. Tyson

David W. Tyson

City Manager

REVIEWED BY:

City Attorney

Finance

Public Works

Engineering

Community Development

DATE:

4-13-11

4-13-11

4-13-11

INITIALS:

WRB

PR

KG

Council Action:

Ordinance No. _____

Resolution No. _____

RE: MARTIN SLOUGH INTERCEPTOR PHASE 1 EASEMENT ACQUISITIONS	FOR AGENDA DATE: APRIL 19, 2011 AGENDA ITEM NO.: <i>Page 2</i>
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SUMMARY *(continued)*

A third appraisal currently being done by the landowners' appraiser will be available next week, and will be used to verify the final purchase price. If the price exceeds the above estimate this issue will be brought back to Council for further consideration and approval.

In summary, Staff is recommending Council:

- 1) Authorize execution of the agreements;
- 2) Approve purchase of the easements and payment of compensation; and
- 3) Authorize the City Manager to execute the easement acquisition documents.

AGENDA SUMMARY**RE: MARTIN SLOUGH INTERCEPTOR PHASE 1
AWARD OF CONSTRUCTION, Bid No. 2011-01****FOR AGENDA DATE: APRIL 19, 2011****AGENDA ITEM No.:**

18

RECOMMENDATION:


1. Declare Mercer-Fraser Company, the low bidder on Martin Slough Interceptor Phase 1 project.
2. Award Bid No. 2011-01 to Mercer-Fraser for the amount of \$4,359,065, and approve \$4,800,000 for construction, which includes a contingency of approximately 10%.

SUMMARY:

On January 30, 2011 bids were advertised for the Martin Slough Interceptor Phase 1 project. A mandatory pre-bid conference was held on February 24, 2011 which was attended by four general engineering contractors. Bids were received and opened on March 17, 2011. The following three bids were received:

Mercer-Fraser, Co. of Eureka, CA - \$4,359,065
 Wahlund Construction of Eureka, CA - \$4,764,049
 Preston Pipelines of Sacramento, CA - \$5,294,795

Staff reviewed and evaluated the bids, and determined the low bid to be in conformance with project requirements. Based on the results of the bid evaluation, Staff recommends Council award construction of the Martin Slough Interceptor Phase 1 project to Mercer-Fraser Company of Eureka for the amount of \$4,359,065, and approve \$4,800,000 for construction, which includes a contingency of approximately 10%.

Prepared by Kurt Gierlich 


FISCAL IMPACT: Expenditures:

\$2,260,000 from California Proposition 50 Grant (reimbursement), already included in budget.
 \$1,829,000 from EPA Special Appropriations Grant (reimbursement), already included in budget.
 Appropriate \$711,000 from Wastewater Reserves to account 512-47000-7516-PJ455-512, 64% which will be reimbursed by HCSD. (Approx. City share = \$256k; Approx. HCSD share = \$455k.)

DEPARTMENT HEAD SIGNATURE:


 Michael Knight
 Assistant City Manager

CITY MANAGER SIGNATURE:


 David W. Tyson
 City Manager

REVIEWED BY:

City Attorney
 Finance
 Public Works

DATE:

4-13-11
 4-13-11
 4-13-11

INITIALS:

WRB
 PR
 MK

Council Action:

Ordinance No. _____

Resolution No. _____

**RE: MARTIN SLOUGH INTERCEPTOR PHASE 1-
CONSULTANT SERVICES DURING CONSTRUCTION**

FOR AGENDA DATE: APRIL 19, 2011

AGENDA ITEM NO.:

Page 2

The contract costs above were prepared based on an estimate of the anticipated scope of work. Payments will be made for the actual work performed in such time period for each task based upon time and materials, plus expenses. The estimated cost for each category of work shall not be exceeded without prior written authorization.

Phase 1 Construction is being partially funded by California Proposition 50 grant funding and by EPA Special Appropriations grant funding.

Phase 1 of the Martin Slough Interceptor project is currently being advertised for public bids, with the bid opening scheduled for March 10, 2011. Staff is requesting Council authorize preparation and execution of consultant contracts in advance of the pre-bid meeting, which has been scheduled for Thursday, February 24, 2011

AGENDA SUMMARY

**RE: EUREKA REDEVELOPMENT AGENCY
SERIES B LEASE REVENUE BONDS**

FOR AGENDA DATE: APRIL 19, 2011

AGENDA ITEM NO.:

19

RECOMMENDATION:

Transfer remaining balance of Series B Lease Revenue Bonds from Project 381: C Street Market Square & Parking Lot Utilities to Project 438: Fishermen's Terminal Building.

SUMMARY:

The 'C' Street Market Square & Parking Lot Utilities project includes construction of a 60-foot wide plaza along the 240-foot length of 'C' Street between the Boardwalk and First Street and a Market Square consisting of a 17,000 square-foot plaza area at the southeastern corner of 'C' Street and the Boardwalk, as well as installation of underground utilities in the future 41-space public parking lot on the westerly side of 'C' Street, south of the Fisherman's Terminal Building.

Project funding was provided by a loan from the California Infrastructure & Economic Development Bank (I-Bank) and Lease Revenue Bonds. The construction contract was accepted by Council on February 15, 2011, and all outstanding expenses have been recorded. The balance remaining in the Series B Lease Revenue Bonds committed to the C Street Market Square project is \$378,535.59. These remaining funds are available for other projects within the Redevelopment project area, including the Fishermen's Terminal Building project.

Staff recommends that Council authorize transfer of \$378,535.59 from Series B Lease Revenue Bonds committed to Project 381: C Street Market Square & Parking Lot Utilities to Project 438: Fishermen's Terminal Building.

Prepared by: A. Sorensen, Associate Civil Engineer 

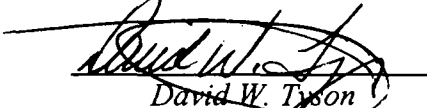
FISCAL IMPACT:

Transfer \$378,535.59 from C Street Market Square account 435-47000-7812-PJ 381-Bond to Fishermen's Terminal Building account 435-47000-7814-PJ 438-Match

DEPARTMENT HEAD SIGNATURE:


Kurt Gierlich
City Engineer

CITY MANAGER SIGNATURE:


David W. Tyson
City Manager

REVIEWED BY:

City Attorney
Finance
Redevelopment

DATE:

4-14-11
4-14-11
4-14-11

INITIALS:

WKB
PR
CTT

Council Action:

Ordinance No. _____

Resolution No. _____

AGENDA SUMMARY**RE: CHAPTER 153 FLOODPLAIN ORDINANCE****FOR AGENDA DATE: APRIL 19, 2011**
AGENDA ITEM NO.:

20

RECOMMENDATION:

1. Waive reading, read by Title only, and Adopt Bill No. 825-C.S., AN ORDINANCE OF THE CITY OF EUREKA AMENDING TITLE 15 PERTAINING TO FLOOD HAZARD AREA REGULATIONS.

SUMMARY:

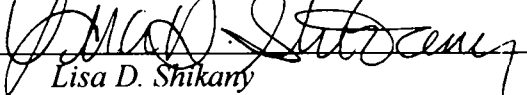
The City of Eureka is proposing an amendment to the city zoning regulations Chapter 153 titled FLOOD HAZARD AREA REGULATIONS. The purpose and intent of Chapter 153 is to promote the public health, safety, and general welfare, and to minimize public and private loss due to flood conditions in specific areas. Provisions incorporated in this chapter are designed to minimize those losses through regulation of land use in areas of special flood hazard. The subject Ordinance was introduced to the City Council on April 5, 2011, with no modifications or amendments.

ATTACHMENTS:

Attachment 1 Bill No. 825-C.S., AN ORDINANCE OF THE CITY OF EUREKA AMENDING TITLE 15 PERTAINING TO FLOOD HAZARD AREA REGULATIONS.

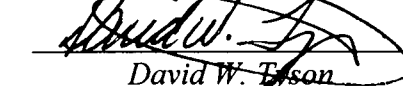
prepared by: Robert S. Wall, Senior Planner

Continued page 2

FISCAL IMPACT: None with this action.**DEPARTMENT HEAD SIGNATURE:**


Lisa D. Shikany

Interim Director of Community Development

CITY MANAGER SIGNATURE:


David W. Tison

City Manager

REVIEWED BY:

Assistant City Manager
City Attorney

DATE:

INITIALS:

Council Action:

Ordinance No. _____

Resolution No. _____

SUMMARY (continued):

On June 11, 2009, the City of Eureka hosted William Hom, P.E., Chief of the Department of Water Resources, Floodplain Assistance Section, regarding a Community Assistance Visit or "CAV." The CAV is a periodic "check-up" of the City's participation of the National Flood Insurance Program. Unsatisfactory participation within this program can result in the expulsion of the community from the flood insurance program, which would render flood insurance unattainable for citizens of Eureka. Currently, there are approximately 100 flood insured properties/policy holders within Eureka

The City received a satisfactory evaluation regarding floodplain development mitigation, with the exception of the need to update the floodplain ordinance. The last whole-scale update of the floodplain ordinance was in 1986, with minor revisions occurring in 1994. According to Mr. Hom, many pertinent definitions have changed or have been added to FEMA's lexicon of terms and procedures related flood hazard mitigation and post flood event assessment and reconstruction. Mr. Hom suggested that Eureka would attain a satisfactory flood hazard management status with a code update which utilized FEMA's and the State's ordinance model. Staff followed the State's recommendation and developed the subject draft ordinance based on FEMA's California model floodplain guidelines.

The development regulations within the ordinance remain virtually unchanged, i.e. federal standards for development within flood-prone areas enforced by the local government. Furthermore, very little local discretion can be utilized when participating in the National Flood Insurance Program. Simply put, as initiated in 1980's nationwide, applicants will continue to provide evidence of their respective building pad elevations in relation to the floodplain elevation and/or "floodproof" their construction, regardless of what jurisdiction they build in.

In order to amend the text of the Eureka Municipal Code a finding must be made that the proposed amendment is consistent with the objectives of the zoning regulations as prescribed in § 155.002 of Eureka Municipal Code. The zoning regulations are adopted to protect the public health, safety, peace, comfort, convenience, prosperity, and general welfare. The purpose and intent of Chapter 153 is to regulate development within the areas of flood hazards. More specifically, minimize or prevent threats to life safety and property damage. As such, the purpose of Chapter 153 is consistent with the purpose of Chapter 155. Staff, therefore, concludes that the City Council can make the finding that the Flood Hazard Area Regulations are consistent with the objectives of the zoning regulations.

Planning Commission Action

The Planning Commission reviewed and provided an affirmative recommendation to the City Council to review and act upon the amended Flood Hazard Area Regulations on September 13, 2010.

Environmental Quality Act

Amending the text of the Eureka Municipal Code is a “project” for the purposes of the California Environmental Quality Act (CEQA). However, pursuant to the CEQA Guidelines, section 15061, there is a general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

Attachment 1.Draft & Existing, Chapter 153 Flood Hazard Area Regulations

BILL NO. ____-C.S.

ORDINANCE NO. ____-C.S.

**AN ORDINANCE OF THE CITY OF EUREKA AMMENDING
CHAPTER 153: FLOOD HAZARD AREA REGULATIONS**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EUREKA AS FOLLOWS:

Section 1.

The following chapter is hereby amended within Title 15:

CHAPTER 153 TITLE FLOOD HAZARD AREA REGULATIONS

§153.001 STATUTORY AUTHORIZATION.

The Legislature of the State of California has in Government Code Sections 65302, 65560, and 65800 conferred upon local governments the authority to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the Eureka City Council does hereby adopt the following floodplain management regulations.

§153.002 FINDINGS OF FACT.

- (A) The flood hazard areas of the City of Eureka are subject to periodic inundation which can result in a loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
- (B) These flood losses are caused by uses that are inadequately elevated, floodproofed, or protected from flood damage. The cumulative effect of obstructions in areas of special flood hazard which increase flood heights and velocities also contribute to flood losses.

§153.003 STATEMENT OF PURPOSE.

It is the purpose of this ordinance to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by legally enforceable regulations applied uniformly throughout the City to all publicly and privately owned land within flood prone, mudslide (i.e. mudflow) or flood related erosion areas. These regulations are designed to:

- (A) Protect human life and health;
- (B) Minimize expenditure of public money for costly flood control projects;
- (C) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (D) Minimize prolonged business interruptions;
- (E) Minimize damage to public facilities and utilities such as water and gas mains; electric, telephone and sewer lines; and streets and bridges located in areas of special flood hazard;

- (F) Help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future blighted areas caused by flood damage;
- (G) Ensure that potential buyers are notified that property is in an area of special flood hazard; and
- (H) Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

§153.004 METHODS OF REDUCING FLOOD LOSSES.

In order to accomplish its purposes, this ordinance includes regulations to:

- (A) Restrict or prohibit uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or flood heights or velocities;
- (B) Require that uses and facilities vulnerable to floods, be protected against flood damage at the time of initial construction;
- (C) Control the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel floodwaters;
- (D) Control filling, grading, dredging, and other development which may increase flood damage;
- (E) Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards in other areas.

§153.005 DEFINITIONS

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance it's most reasonable application.

A ZONE - see "**SPECIAL FLOOD HAZARD AREA.**"

ACCESSORY STRUCTURE means a structure that is either:

- (1) A subordinate structure which use is appropriate, subordinate, and customarily incidental to that of the main structure or the main use of the land and which is located on the same site with the main structure or use; or
- (2) An attached or detached garage or similar covered structure for the parking of vehicles for residential units; or
- (3) A small shed or similar structure less than 120 square feet in size.

ACCESSORY USE means a use which is incidental and subordinate to the principal use of the parcel of land on which it is located.

ALLUVIAL FAN means a geomorphologic feature characterized by a cone or fan-shaped deposit of boulders, gravel, or fine sediments that have been eroded from areas of higher topography, transported by flood flows, and then deposited at lower elevations, and which are subject to flash flooding, high velocity flows, debris flows, erosion, sediment movement and deposition, and channel migration.

APEX means a point on an alluvial fan or similar landform below which the flow path of the major stream that formed the fan becomes unpredictable and alluvial fan flooding can occur.

APPEAL means a request for a review of the Floodplain Administrator's interpretation of any provision of this ordinance.

AREA OF SHALLOW FLOODING means a designated AO or AH Zone on the Flood Insurance Rate Map (FIRM). The base flood depths range from one to three feet; a clearly defined channel does not exist; the path of flooding is unpredictable and indeterminate; and velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

AREA OF SPECIAL FLOOD HAZARD - See "**SPECIAL FLOOD HAZARD AREA**."

BASE FLOOD means a flood which has a one percent chance of being equaled or exceeded in any given year (also called the "100-year flood"). Base flood is the term used throughout this ordinance.

BASE FLOOD ELEVATION (BFE) means the elevation shown on the Flood Insurance Rate Map for Zones AE, AH, A1-30, VE and V1-V30 that indicates the water surface elevation resulting from a flood that has a 1-percent or greater chance of being equaled or exceeded in any given year.

BASEMENT means any area of a building having its floor subgrade - i.e., below ground level - on all sides.

BREAKAWAY WALLS are any type of walls, whether solid or lattice, and whether constructed of concrete, masonry, wood, metal, plastic or any other suitable building material which is not part of the structural support of the building and which is designed to break away under abnormally high tides or wave action without causing any damage to the structural integrity of the building on which they are used or any buildings to which they might be carried by flood waters. A breakaway wall shall have a safe design loading resistance of not less than 10 and no more than 20 pounds per square foot. Use of breakaway walls must be certified by a registered engineer or architect and shall meet the following conditions:

- (1) Breakaway wall collapse shall result from a water load less than that which would occur during the base flood; and
- (2) The elevated portion of the building shall not incur any structural damage due to the effects of wind and water loads acting simultaneously in the event of the base flood.

BUILDING - see "**STRUCTURE**."

COASTAL HIGH HAZARD AREA means an area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. It is an area subject to high velocity waters, including coastal and tidal inundation or tsunamis. The area is designated on a Flood Insurance Rate Map (FIRM) as Zone V1-V30, VE, or V.

DEVELOPMENT means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

ENCROACHMENT means the advance or infringement of uses, plant growth, fill, excavation, buildings, permanent structures or development into a floodplain which may impede or alter the flow capacity of a floodplain.

EXISTING MANUFACTURED HOME PARK OR SUBDIVISION means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before June 19, 1986 (Ord. 448-C.S.).

EXPANSION TO AN EXISTING MANUFACTURED HOME PARK OR SUBDIVISION means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

FLOOD, FLOODING, OR FLOOD WATER means:

- (1) A general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland or tidal waters; the unusual and rapid accumulation or runoff of surface waters from any source; and/or mudslides (i.e., mudflows); and
- (2) The condition resulting from flood-related erosion.

FLOOD BOUNDARY AND FLOODWAY MAP (FBFM) means the official map on which the Federal Emergency Management Agency or Federal Insurance Administration has delineated both the areas of special flood hazards and the floodway.

FLOOD INSURANCE RATE MAP (FIRM) means the official map on which the Federal Emergency Management Agency or Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

FLOOD INSURANCE STUDY means the official report provided by the Federal Insurance Administration that includes flood profiles, the Flood Insurance Rate Map, the Flood Boundary and Floodway Map, and the water surface elevation of the base flood.

FLOODPLAIN OR FLOOD-PRONE AREA means any land area susceptible to being inundated by water from any source - see **FLOODING**.

FLOODPLAIN ADMINISTRATOR is the community official designated by title to administer and enforce the floodplain management regulations.

FLOODPLAIN MANAGEMENT means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including but not limited to emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

FLOODPLAIN MANAGEMENT REGULATIONS means this ordinance and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as grading and erosion control) and other application of police power which control development in flood-prone areas. This term describes federal, state or local regulations in any combination thereof which provide standards for preventing and reducing flood loss and damage.

FLOODPROOFING means any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures, and their contents. For guidelines on dry and wet floodproofing, see FEMA Technical Bulletins TB 1-93, TB 3-93, and TB 7-93.

FLOODWAY means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot. Also referred to as "**REGULATORY FLOODWAY**."

FLOODWAY FRINGE is that area of the floodplain on either side of the "Regulatory Floodway" where encroachment may be permitted.

FRAUD AND VICTIMIZATION as related to the Variance section of this ordinance, means that the variance granted must not cause fraud on or victimization of the public. In examining this requirement, the Planning Commission will consider the fact that every newly constructed building adds to government responsibilities and remains a part of the community for fifty to one-hundred years. Buildings that are permitted to be constructed below the base flood elevation are subject during all those years to increased risk of damage from floods, while future owners of the property and the community as a whole are subject to all the costs, inconvenience, danger, and suffering that those increased flood damages bring. In addition, future owners may purchase the property, unaware that it is subject to potential flood damage, and can be insured only at very high flood insurance rates.

FUNCTIONALLY DEPENDENT USE means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, and does not include long-term storage or related manufacturing facilities.

GOVERNING BODY is the City Council of the City of Eureka which is empowered to adopt and implement regulations to provide for the public health, safety and general welfare of its citizenry.

HARDSHIP as related to the Variance section of this ordinance means the exceptional hardship that would result from a failure to grant the requested variance. The Planning Commission requires that the variance be exceptional, unusual, and peculiar to the property involved. Mere economic or financial hardship alone is not exceptional. Inconvenience, aesthetic considerations, physical handicaps, personal preferences, or the disapproval of one's neighbors likewise cannot, as a rule, qualify as an exceptional hardship. All of these problems can be resolved through other means without granting a variance, even if the alternative is more expensive, or requires the property owner to build elsewhere or put the parcel to a different use than originally intended.

HIGHEST ADJACENT GRADE means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

HISTORIC STRUCTURE means any structure that is:

- (1) Listed individually in the National Register of Historic Places (a listing maintained by the

Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

- (2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (3) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of Interior; or
- (4) Individually listed on a local inventory of historic places

LEVEE means a man-made structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control or divert the flow of water so as to provide protection from temporary flooding.

LEVEE SYSTEM means a flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accord with sound engineering practices.

LOWEST FLOOR means the lowest floor of the lowest enclosed area, including basement (see "**BASEMENT**" definition).

- (1) An unfinished or flood resistant enclosure below the lowest floor that is usable solely for parking of vehicles, building access or storage in an area other than a basement area, is not considered a building's lowest floor provided it conforms to applicable non-elevation design requirements, including, but not limited to:
 - (a) The flood openings standards in **§153.017(C) (3)**;
 - (b) The anchoring standards in **§153.017(A)**;
 - (c) The construction materials and methods standards in **§153.017(B)**; and
 - (d) The standards for utilities in **§153.018**.
- (2) For residential structures, all subgrade enclosed areas are prohibited as they are considered to be basements (see "**BASEMENT**" definition). This prohibition includes below-grade garages and storage areas.

MANUFACTURED HOME means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle".

MANUFACTURED HOME PARK OR SUBDIVISION means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

MARKET VALUE is defined in the City of Eureka substantial damage/improvement procedures. See §153.014 (B) (1).

MEAN SEA LEVEL means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) of 1988, or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

NEW CONSTRUCTION, for floodplain management purposes, means structures for which the "start of construction" commenced on or after June 19, 1986, and includes any subsequent improvements to such structures.

NEW MANUFACTURED HOME PARK OR SUBDIVISION means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after June 19, 1986.

OBSTRUCTION includes, but is not limited to, any dam, wall, wharf, embankment, levee, dike, pile, abutment, protection, excavation, channelization, bridge, conduit, culvert, building, wire, fence, rock, gravel, refuse, fill, structure, vegetation or other material in, along, across or projecting into any watercourse which may alter, impede, retard or change the direction and/or velocity of the flow of water, or due to its location, its propensity to snare or collect debris carried by the flow of water, or its likelihood of being carried downstream.

ONE-HUNDRED-YEAR FLOOD or "100-year flood" - see "**BASE FLOOD**."

PRIMARY FRONTAL DUNE means a continuous or nearly continuous mound or ridge of sand with relatively steep seaward and landward slopes immediately landward and adjacent to the beach and subject to erosion and overtopping from high tides and waves during major coastal storms. The inland limit of the primary frontal dune occurs at the point where there is a distinct change from a relatively mild slope.

PROGRAM DEFICIENCY means a defect in a community's floodplain management regulations or administrative procedures that impairs effective implementation of those floodplain management regulations.

PUBLIC SAFETY AND NUISANCE as related to the Variance section of this ordinance, means that the granting of a variance must not result in anything which is injurious to safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

RECREATIONAL VEHICLE means a vehicle which is:

- (1) Built on a single chassis;
- (2) 400 square feet or less when measured at the largest horizontal projection;
- (3) Designed to be self-propelled or permanently towable by a light-duty truck; and
- (4) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

REGULATORY FLOODWAY means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

REMEDY A VIOLATION means to bring the structure or other development into compliance with State or local floodplain management regulations, or if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the ordinance or otherwise deterring future similar violations, or reducing State or Federal financial exposure with regard to the structure or other development.

RIVERINE means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

SAND DUNES mean naturally occurring accumulations of sand in ridges or mounds landward of the beach.

SHEET FLOW AREA - see **AREA OF SHALLOW FLOODING**.

SPECIAL FLOOD HAZARD AREA (SFHA) means an area in the floodplain subject to a 1 percent or greater chance of flooding in any given year. It is shown on an FHBM or FIRM as Zone A, AO, A1-A30, AE, A99, AH, V1-V30, VE or V.

START OF CONSTRUCTION includes substantial improvement and other proposed new development and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days from the date of the permit. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

STRUCTURE means a walled and roofed building that is principally above ground; this includes a gas or liquid storage tank or a manufactured home.

SUBSTANTIAL DAMAGE means damage of any origin sustained by a structure whereby the cost of restoring the structure to before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENT means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage" regardless of the actual repair work performed. The term does not, however, include either:

1. Any project for improvement of a structure to correct existing violations or state or local health,

sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or

2. Any alteration of a "historic structure," provided that the alteration will not preclude the structure's continued designation as a "historic structure."

V ZONE - see "***COASTAL HIGH HAZARD AREA***."

VARIANCE means a grant of relief from the requirements of this ordinance which permits construction in a manner that would otherwise be prohibited by this ordinance.

VIOLATION means the failure of a structure or other development to be fully compliant with this ordinance. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this ordinance is presumed to be in violation until such time as that documentation is provided.

WATER SURFACE ELEVATION means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) of 1988, or other datum, of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

WATERCOURSE means a lake, river, creek, stream, wash, arroyo, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

GENERAL PROVISIONS

§153.006 LANDS TO WHICH THIS ORDINANCE APPLIES.

This ordinance shall apply to all areas of special flood hazards within the jurisdiction of the City of Eureka.

§153.007 BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD.

The areas of special flood hazard identified by the Federal Emergency Management Agency (FEMA) in the "Flood Insurance Study (FIS) for the City of Eureka, Humboldt County California, and Incorporated Areas" dated June 17, 1986, with accompanying Flood Insurance Rate Maps (FIRM's) and Flood Boundary and Floodway Maps (FBFM's), dated June 17, 1986, and all subsequent amendments and/or revisions, are hereby adopted by reference and declared to be a part of this ordinance. The FIS and attendant mapping is the minimum area of applicability of this ordinance and may be supplemented by studies for other areas which allow implementation of this ordinance and which are recommended to the Planning Commission by the Floodplain Administrator. The study, FIRM's and FBFM's are on file at Eureka City Hall, Eureka, California.

§153.008 COMPLIANCE.

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this ordinance and other applicable regulations. Violation of the requirements (including violations of conditions and safeguards) shall constitute a misdemeanor. Nothing herein shall prevent the City of Eureka from taking such lawful action as is necessary to prevent or remedy any violation.

§153.009 ABROGATION AND GREATER RESTRICTIONS.

This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

§153.010 INTERPRETATION.

In the interpretation and application of this ordinance, all provisions shall be:

- A. Considered as minimum requirements;
- B. Liberally construed in favor of the governing body; and
- C. Deemed neither to limit nor repeal any other powers granted under state statutes.

§153.011 WARNING AND DISCLAIMER OF LIABILITY.

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the City of Eureka or any officer or employee thereof, the State of California, or the Federal Emergency Management Agency, for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

§153.012 SEVERABILITY.

This ordinance and the various parts thereof are hereby declared to be severable. Should any section of this ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as a whole, or any portion thereof other than the section so declared to be unconstitutional or invalid.

ADMINISTRATION

§153.013 DESIGNATION OF THE FLOODPLAIN ADMINISTRATOR.

The City Manager or his or her designee, is hereby appointed to administer, implement, and enforce this ordinance by granting or denying development permits in accord with its provisions.

§153.014 DUTIES AND RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR.

The duties and responsibilities of the Floodplain Administrator shall include, but not be limited to the following:

A. Permit Review.

Review all development permits to determine:

1. Permit requirements of this ordinance have been satisfied, including determination of substantial improvement and substantial damage of existing structures;

2. All other required state and federal permits have been obtained;
3. The site is reasonably safe from flooding;
4. The proposed development does not adversely affect the carrying capacity of areas where base flood elevations have been determined but a floodway has not been designated. This means that the cumulative effect of the proposed development when combined with all other existing and anticipated development will not increase the water surface elevation of the base flood more than 1 foot at any point within the City of Eureka and
5. All Letters of Map Revision (LOMR's) for flood control projects are approved prior to the issuance of building permits. Building Permits must not be issued based on Conditional Letters of Map Revision (CLOMR's). Approved CLOMR's allow construction of the proposed flood control project and land preparation as specified in the "start of construction" definition.

B. Development of Substantial Improvement and Substantial Damage Procedures.

1. The Floodplain Administrator, with the concurrence of the City of Eureka Public Works/Building Safety Departments shall determine the extent of substantial damage and/or improvement to an affected structure or building. The City shall use **§153.027 and §153.028**, the **Substantial Improvement/Damage Determination Sections** of this Ordinance and any subsequent FEMA Technical Guides to determine if structural damage and /or improvements rise to the level of substantial as defined in **§153.005**. The City shall, when determining the "Market Value" of a structure, shall utilize the ratio of the estimated cost of restoring the structure to its condition prior to such damage or partial deconstruction to the estimated cost of duplicating the entire structure as it existed prior thereto. Estimates for this purpose shall be made by or shall be reviewed and approved by, the Chief Building Official or designee.
2. The Floodplain Administrator shall assure all procedures referenced in **§153.014** are coordinated with other City departments/divisions and implemented by City staff.

C. Review, Use and Development of Other Base Flood Data.

When base flood elevation data has not been provided in accordance with **§153.007**, the Floodplain Administrator shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal or state agency, or other source, in order to administer the "Provisions for Flood Hazard Reduction" Section of this Ordinance.

A base flood elevation may be obtained using one of two methods from the FEMA publication, FEMA 265, "Managing Floodplain Development in Approximate Zone A Areas – A Guide for Obtaining and Developing Base (100-year) Flood Elevations" dated July 1995.

D. Notification of Other Agencies.

1. Alteration or relocation of a watercourse:
 - a. Notify adjacent communities and the California Department of Water Resources prior to alteration or relocation;

- b. Submit evidence of such notification to the Federal Emergency Management Agency; and
 - c. Assure that the flood carrying capacity within the altered or relocated portion of said watercourse is maintained.
- 2. Base Flood Elevation changes due to physical alterations:
 - a. Within 6 months of information becoming available or project completion, whichever comes first, the floodplain administrator shall submit or assure that the permit applicant submits technical or scientific data to FEMA for a Letter of Map Revision (LOMR).
 - b. All LOMR's for flood control projects are approved prior to the issuance of building permits. Building Permits must not be issued based on Conditional Letters of Map Revision (CLOMR's). Approved CLOMR's allow construction of the proposed flood control project and land preparation as specified in the "start of construction" definition.

Such submissions are necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and floodplain management requirements are based on current data.

- 3. Changes in corporate boundaries:

Notify FEMA in writing whenever the corporate boundaries have been modified by annexation or other means and include a copy of a map of the community clearly delineating the new corporate limits.

E. Documentation of Floodplain Development.

Obtain and maintain for public inspection and make available as needed the following:

- 1. Certification required by **§153.017 (C) (1) & §153.020** (lowest floor elevations);
- 2. Certification required by **§153.017 (C) (2)** (elevation or floodproofing of nonresidential structures);
- 3. Certification required by **§153.017 (C) (3)** (wet floodproofing standard);
- 4. Certification of elevation required by **§153.019 (A) (3)** (subdivisions and other proposed development standards);
- 5. Certification required by **§153.022 (B)** (floodway encroachments);
- 6. Information required by **§153.023 (F)** (coastal construction standards); and
- 7. Maintain a record of all variance actions, including justification for their issuance, and report such variances issued in the City's biennial report submitted to the Federal Emergency Management Agency.

F. Map Determination.

Make interpretations where needed, as to the exact location of the boundaries of the areas of special flood hazard, where there appears to be a conflict between a mapped boundary and actual field conditions. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in **§153.16**.

(G) Remedial Action.

Take action to remedy violations of this ordinance as specified in **§153.008**.

(H) Biennial Report.

Complete and submit Biennial Report to FEMA.

(I) Planning.

Assure community's General Plan is consistent with floodplain management objectives herein.

§153.015 DEVELOPMENT PERMIT.

A development permit shall be obtained before any construction or other development, including manufactured homes, within any area of special flood hazard established in **§153.007**. Application for a development permit shall be made on forms furnished by the City of Eureka and fees established by the City Council. The applicant shall provide the following minimum information:

- A.** Three (3) sets of plans for residential construction, five (5) sets for commercial structures, drawn to scale, showing:
 - 1. Location, dimensions, and elevation of the area in question, existing or proposed structures, storage of materials and equipment and their location;
 - 2. Proposed locations of water supply, sanitary sewer, and other utilities;
 - 3. Grading information showing existing and proposed contours, any proposed fill, and drainage facilities;
 - 4. Location of the regulatory floodway when applicable;
 - 5. Base flood elevation information as specified in **§153.007 or §153.014 (C)**;
 - 6. Proposed elevation in relation to mean sea level of the lowest floor (including basement) of all structures; and
 - 7. Proposed elevation in relation to mean sea level to which any nonresidential structure will be floodproofed, as required in **§153.017 (C) (2)** of this ordinance and detailed in FEMA Technical Bulletin TB 3-93.
- B.** Certification from a registered civil engineer or architect that the nonresidential floodproofed building meets the floodproofing criteria in **§153.017 (C) (2)**.
- C.** For a crawl-space foundation, location and total net area of foundation openings as required in **§153.017 (C) (3)** of this ordinance and detailed in FEMA Technical Bulletins 1-93 and 7-

93.

D. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

E. All appropriate certifications listed in **§153.014 (E)** of this ordinance.

§153.016 APPEALS.

The Planning Commission of the City of Eureka shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this ordinance.

PROVISIONS FOR FLOOD HAZARD REDUCTION

§153.017 STANDARDS OF CONSTRUCTION.

In all areas of special flood hazards the following standards are required:

A. Anchoring.

All new construction and substantial improvements of structures, including manufactured homes, shall be adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.

B. Construction Materials and Methods.

All new construction and substantial improvements of structures, including manufactured homes, shall be constructed:

1. With flood resistant materials, and utility equipment resistant to flood damage for areas below the base flood elevation;
2. Using methods and practices that minimize flood damage;
3. With electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding; and
4. Within Zones AH or AO, adequate drainage paths shall be constructed around structures on slopes to guide flood waters around and away from proposed structures.

C. Elevation and Floodproofing.

1. **Residential construction.**

All new construction or substantial improvements of residential structures shall have the lowest floor, including basement:

- a. In AE, AH, A1-30 Zones, elevated to or above the base flood elevation.
- b. In an AO zone, elevated above the highest adjacent grade to a height equal to or exceeding the Base Flood Elevation specified in feet on the FIRM, or elevated at least 2 feet above the highest adjacent grade if no Base Flood Elevation is specified.
- c. In an A zone, without Base Flood Elevations specified on the FIRM (unnumbered A zone), elevated to or above the base flood elevation; as determined under **§153.014(c)**.

Upon the completion of the structure, the elevation of the lowest floor, including basement, shall be certified by a registered civil engineer or licensed land surveyor, and verified by the Chief Building Official to be properly elevated. Such certification and verification shall be provided to the Floodplain Administrator.

2. **Nonresidential construction.**

All new construction or substantial improvements of nonresidential structures shall either be elevated to conform with **§153.017(c) (1)** or:

- a. Be floodproofed, together with attendant utility and sanitary facilities below the elevation recommended under **§153.017(c) (1)**, so that the structure is watertight with walls substantially impermeable to the passage of water; and
- b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and
- c. Be certified by a registered civil engineer or architect that the standards of **§153.017(c) (2) (a) & (b)** are satisfied. Such certification shall be provided to the Floodplain Administrator.

3. **Flood openings.**

All new construction and substantial improvements of structures with fully enclosed areas below the lowest floor (excluding basements) that are usable solely for parking of vehicles, building access or storage, and which are subject to flooding, shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater. Designs for meeting this requirement must meet the following minimum criteria:

- a. For non-engineered openings:
 1. Have a minimum of two openings on different sides having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding; and
 2. The bottom of all openings shall be no higher than one foot above grade; and
 3. Openings may be equipped with screens, louvers, valves or other coverings or devices provided that they permit the automatic entry and exit of floodwater; and

4. Buildings with more than one enclosed area must have openings on exterior walls for each area to allow flood water to directly enter;
 - b. Engineered openings shall be certified by a registered civil engineer or architect.
4. **Manufactured homes.**
- a. See **§153.020**.
5. **Garages and accessory structures.**
- a. Attached garages.
 1. A garage attached to a residential structure, constructed with the garage floor slab below the BFE, must be designed to allow for the automatic entry of flood waters. See **§153.017 (C) (3)**. Areas of the garage below the BFE must be constructed with flood resistant materials. See **§153.017 (B)**.
 2. A garage attached to a nonresidential structure must meet the above requirements or be dry floodproofed. For guidance on below grade parking areas, see FEMA Technical Bulletin TB-6.
 - b. Detached garages and accessory structures.
 1. "Accessory structures" used solely for parking or limited storage, as defined in **§153.005**, may be constructed such that its floor is below the base flood elevation (BFE), provided the structure is designed and constructed in accordance with the following requirements:
 - a) Use of the accessory structure must be limited to parking or limited storage;
 - b) The portions of the accessory structure located below the BFE must be built using flood-resistant materials;
 - c) The accessory structure must be adequately anchored to prevent flotation, collapse and lateral movement;
 - d) Any mechanical and utility equipment in the accessory structure must be elevated or floodproofed to or above the BFE;
 - e) The accessory structure must comply with floodplain encroachment provisions in **§153.022**; and
 - f) The accessory structure must be designed to allow for the automatic entry of flood waters in accordance with **§153.017 (C) (3)**.
 2. Detached garages and accessory structures not meeting the above standards must be constructed in accordance with all applicable standards in **§153.017**.

§153.018 STANDARDS FOR UTILITIES.

- A.** All new and replacement water supply and sanitary sewage systems shall be designed to minimize or eliminate:
 - 1. Infiltration of flood waters into the systems; and
 - 2. Discharge from the systems into flood waters.
- B.** On-site waste disposal systems shall be located to avoid impairment to them, or contamination from them during flooding.

§153.019 STANDARDS FOR SUBDIVISIONS AND OTHER PROPOSED DEVELOPMENT.

- A.** All new subdivision proposals and other proposed development, including proposals for manufactured home parks and subdivisions shall:
 - 1. Identify the Special Flood Hazard Areas (SFHA) and Base Flood Elevations (BFE).
 - 2. Identify the elevations of lowest floors of all proposed structures and pads on the final plans or tentative subdivision maps.
 - 3. If the site is filled above the base flood elevation, the following as-built information for each structure shall be certified by a registered civil engineer or licensed land surveyor and provided as part of an application for a Letter of Map Revision based on Fill (LOMR-F) to the Floodplain Administrator:
 - a. Lowest floor elevation.
 - b. Pad elevation.
 - c. Lowest adjacent grade.
- B.** All subdivision proposals and other proposed development shall be consistent with the need to minimize flood damage.
- C.** All subdivision proposals and other proposed development shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage.
- D.** All subdivisions and other proposed development shall provide adequate drainage to reduce exposure to flood hazards.

§153.020 STANDARDS FOR MANUFACTURED HOMES.

- A.** All manufactured homes that are placed or substantially improved, on sites located: (1) outside of a manufactured home park or subdivision; (2) in a new manufactured home park or subdivision; (3) in an expansion to an existing manufactured home park or subdivision; or (4) in an existing manufactured home park or subdivision upon which a manufactured home has incurred "substantial damage" as the result of a flood, shall:
 - 1. Within Zones A1-30, AH, and AE on the community's Flood Insurance Rate Map, be

elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to or above the base flood elevation and be securely fastened to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

2. Within Zones V1-30, V, and VE on the community's Flood Insurance Rate Map, meet the requirements of **§153.023**.

B. All manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision within Zones A1-30, AH, AE, V1-30, V, and VE on the community's Flood Insurance Rate Map that are not subject to the provisions of **§153.020 (A)** will be securely fastened to an adequately anchored foundation system to resist flotation, collapse, and lateral movement, and be elevated so that either the:

1. Lowest floor of the manufactured home is at or above the base flood elevation; or
2. Manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade.

Upon the completion of the structure, the elevation of the lowest floor including basement shall be certified by a registered civil engineer or licensed land surveyor, and verified by the community building inspector to be properly elevated. Such certification and verification shall be provided to the Floodplain Administrator.

§153.021 STANDARDS FOR RECREATIONAL VEHICLES.

A. All recreational vehicles placed in Zones A1-30, AH, AE, V1-30 and VE will either:

1. Be on the site for fewer than 180 consecutive days; or
2. Be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or
3. Meet the permit requirements of **§153.015** of this ordinance and the elevation and anchoring requirements for manufactured homes in **§153.020**.

B. Recreational vehicles placed on sites within Zones V1-30, V, and VE on the community's Flood Insurance Rate Map will meet the requirements of **§153.021 (A)** and **§153.023**.

§153.022 FLOODWAYS.

Since floodways are an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

A. Until a regulatory floodway is adopted, no new construction, substantial development, or other development (including fill) shall be permitted within Zones A1-30 and AE, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other development, will not increase the water surface elevation of the base flood more than 1 foot at any point within the City of Eureka.

- B.** Within an adopted regulatory floodway, the City shall prohibit encroachments, including fill, new construction, substantial improvements, and other development, unless certification by a registered civil engineer is provided demonstrating that the proposed encroachment shall not result in any increase in flood levels during the occurrence of the base flood discharge.
- C.** If **§153.022 (A) & (B)** are satisfied, all new construction, substantial improvement, and other proposed new development shall comply with all other applicable “provision for flood hazard reduction”

§153.023 COASTAL HIGH HAZARD AREAS.

Within coastal high hazard areas, Zones V, V1-30, and VE, as established under **§153.007**, the following standards shall apply:

- A.** All new residential and non-residential construction, including substantial improvement/damage, shall be elevated on adequately anchored pilings or columns and securely anchored to such pilings or columns so that the bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated to or above the base flood level. The pile or column foundation and structure attached thereto is anchored to resist flotation, collapse, and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Water loading values used shall be those associated with the base flood. Wind loading values used shall be those required by applicable state or local building standards.
- B.** All new construction and other development shall be located on the landward side of the reach of mean high tide.
- C.** All new construction and substantial improvement shall have the space below the lowest floor free of obstructions or constructed with breakaway walls as defined in **§153.005** of this ordinance. Such enclosed space shall not be used for human habitation and will be usable solely for parking of vehicles, building access or storage.
- D.** Fill shall not be used for structural support of buildings.
- E.** Man-made alteration of sand dunes which would increase potential flood damage is prohibited.
- F.** The Floodplain Administrator shall obtain and maintain the following records:
 - 1. Certification by a registered engineer or architect that a proposed structure complies with **§153.023 (A)**; and
 - 2. The elevation (in relation to mean sea level) of the bottom of the lowest horizontal structural member of the lowest floor (excluding pilings or columns) of all new and substantially improved structures, and whether such structures contain a basement.

VARIANCE PROCEDURES

§153.024 NATURE OF VARIANCES.

The issuance of a variance is for floodplain management purposes only. Insurance premium rates are determined by statute according to actuarial risk and will not be modified by the granting of a variance.

The variance criteria set forth in this section of the ordinance are based on the general principle of zoning law that variances pertain to a property and are not personal in nature. A variance may be granted for a property with physical characteristics so unusual that complying with the requirements of this ordinance would create an exceptional hardship to the applicant or the surrounding property owners. The characteristics must be unique to the property and not be shared by adjacent parcels. The unique characteristic must pertain to the land itself, not to the structure, its inhabitants, or the property owners.

It is the duty of the City to help protect its citizens from flooding. This need is so compelling and the implications of the cost of insuring a structure built below flood level are so serious that variances from the flood elevation or from other requirements in the flood ordinance are quite rare. The long term goal of preventing and reducing flood loss and damage can only be met if variances are strictly limited. Therefore, the variance guidelines provided in this ordinance are detailed and contain multiple provisions that must be met before a variance can be properly granted. The criteria are designed to screen out those situations in which alternatives other than a variance are more appropriate.

§153.025 CONDITIONS FOR VARIANCES.

- A.** Generally, variances may be issued for new construction, substantial improvement, and other proposed new development to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing that the procedures of the Administration and Provisions for Flood hazard Reduction Sections of this ordinance have been fully considered. As the lot size increases beyond one-half acre, the technical justification required for issuing the variance increases.
- B.** Variances may be issued for the repair or rehabilitation of "**HISTORIC STRUCTURES**" (as defined in **§153.005** of this ordinance) upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as an historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- C.** Variances shall not be issued within any mapped regulatory floodway if any increase in flood levels during the base flood discharge would result.
- D.** Variances shall only be issued upon a determination that the variance is the "minimum necessary" considering the flood hazard, to afford relief. "Minimum necessary" means to afford relief with a minimum of deviation from the requirements of this ordinance. For example, in the case of variances to an elevation requirement, this means the Planning Commission need not grant permission for the applicant to build at grade, or even to whatever elevation the applicant proposes, but only to that elevation which the Planning Commission believes will both provide relief and preserve the integrity of the local

ordinance.

- E.** Any applicant to whom a variance is granted shall be given written notice over the signature of a community official that:
 - 1. The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance, and
 - 2. Such construction below the base flood level increases risks to life and property. A copy of the notice shall be recorded by the Floodplain Administrator in the Office of the Humboldt County Recorder and shall be recorded in a manner so that it appears in the chain of title of the affected parcel of land.
- F.** The Floodplain Administrator will maintain a record of all variance actions, including justification for their issuance, and report such variances issued in its biennial report submitted to the Federal Emergency Management Agency.

§153.026 APPEAL BOARD.

- A.** Upon reviewing requests for variances, the Planning Commission shall consider all technical evaluations, all relevant factors, standards specified in other sections of this ordinance, and the:
 - 1. Danger that materials may be swept onto other lands to the injury of others;
 - 2. Danger of life and property due to flooding or erosion damage;
 - 3. Susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the existing individual owner and future owners of the property;
 - 4. Importance of the services provided by the proposed facility to the community;
 - 5. Necessity to the facility of a waterfront location, where applicable;
 - 6. Availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
 - 7. Compatibility of the proposed use with existing and anticipated development;
 - 8. Relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
 - 9. Safety of access to the property in time of flood for ordinary and emergency vehicles;
 - 10. Expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site; and
 - 11. Costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water system, and streets and bridges.

B. Variances shall only be granted upon a:

1. Showing of good and sufficient cause;
2. Determination that failure to grant the variance would result in exceptional **"HARDSHIP"** to the applicant; and
3. Determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create a nuisance (see **"PUBLIC SAFETY AND NUISANCE"**), cause **"FRAUD AND VICTIMIZATION"** of the public, or conflict with existing local laws or ordinances.

C. Variances may be issued for new construction, substantial improvement, and other proposed new development necessary for the conduct of a functionally dependent use provided that the provisions of **§153.026 (A) through §153.026 (D)** are satisfied and that the structure or other development is protected by methods that minimize flood damages during the base flood and does not result in additional threats to public safety and does not create a public nuisance.

D. Upon consideration of the factors of **§153.026 (A)** and the purposes of this ordinance, the Planning Commission may attach such conditions to the granting of variances as it deems necessary to further the purposes of this ordinance.

SUBSTANTIAL IMPROVEMENT/DAMAGE DETERMINATION

§153.027 IMPROVEMENT COSTS THAT MUST BE INCLUDED WITHIN SUBSTANTIAL IMPROVEMENT AND/OR DAMAGE DETERMINATIONS

A. All structural elements, including but not limited to:

1. Spread or continuous foundation or footings and pilings
2. Monolithic concrete slab foundations
3. Bearing walls, tie beams, and trusses
4. Wood or reinforced concrete decking or roofing
5. Floors and ceilings including insulation
6. Attached decks, stairways and porches
7. Interior partition walls
8. Exterior wall finishes
9. Windows and doors
10. Roof sheathing
11. Roof re-shingling or re-tiling
12. Roof dormers
13. Balconies
14. Hardware

B. All interior finish elements, including, but not limited to:

1. Floor cover such as tile, wood, vinyl, carpet, marble etc.

2. Wall and ceiling finishes such as drywall, painting, stucco, plaster, wood paneling, marble, etc.
3. Kitchen, utility, bathroom, and garage cabinets and counter tops
4. Built-in bookcases, cabinets, entertainment centers, aquariums, bars, wine racks etc.

C. All utility and service equipment, including but not limited to:

1. HVAC equipment including ducting, boilers, chillers etc.
2. Plumbing services including water heaters, sinks, fixtures, toilets, showers, tubs, etc.
3. Electrical services including light fixtures, ceiling fans, etc.
4. Built-in appliances including dishwashers, ovens, ranges, garbage disposals, trash compactors, etc.
5. Security and fire alarms, and fire suppression systems
6. Central vacuum systems
7. Water filtration, conditioning or recirculation systems

D. Miscellaneous costs that must be included:

1. Labor and other costs associated with demolishing, removing or altering of building components
2. Overhead and profit
3. The values of donated or discounted materials must be included at their full market value and estimated as though they were purchased during a normal market transaction
4. The value of self or volunteered labor must be estimated at prevailing wages for the appropriate type of construction wage scale.

§153.028 Improvement Costs That May Be Excluded

A. Costs of improvements to correct existing code violations, only if the following:

1. A regulatory official was informed and knew the extent of the code related deficiencies
2. The deficiency was in existence prior to the damage event or improvement
3. Only the “minimum necessary” to assure safe living conditions may be excluded from the improvement cost

B. Historic structures must be:

1. Listed on the National Register of Historic Places; or
2. Certified by the Secretary of the Interior as contributing to the historic significance of a historic district; or
3. Listed on a State inventory of historic places approved by the Secretary of the Interior; or
4. Listed on a local inventory to the satisfaction of the State Office of Historic Preservation
5. If the improvements are for purposes of restoration or preservation only and the structure meets one of the above “certification”, then the substantial improvement requirements may be waived upon issuance of a variance.

C. ADA requirements

Structural upgrades necessary to comply with the American Disabilities Act may be excluded from the total improvement cost if the building falls within one of the 12 organizations included within the purview of Title III of ADA.

D. Debris removal and clean-up costs may be excluded:

1. Debris removal from building or lot, dumpster rental, transport fees to landfill, landfill disposal fees

2. Clean-up dirt and mud removal, building dry-out etc.

E. Outside improvements may be excluded including:

1. Landscaping
2. Sidewalks
3. Fences
4. Yard lights
5. Swimming pools
6. Screened pool enclosures
7. Sheds
8. Gazebos
9. Detached structures including garages
10. Landscape irrigation systems
11. Wells and septic systems

F. Excludable miscellaneous items

Items not considered real property including but not limited to throw rugs, furniture, refrigerators, other contents not connected/attached to, or part of the structure.

G. Other excludable costs:

1. Plans and specifications
2. Surveys
3. Permit Fees

Section 2.

This ordinance becomes effective thirty (30) days after the date of its enactment.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Eureka in the County of Humboldt, State of California, on the _____ day of _____, 2011 by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

Lance Madsen, Mayor Pro Tem

THE ABOVE ORDINANCE WAS SUBMITTED TO THE MAYOR on the ____ day of _____, 2011, and hereby approved.

Frank Jager, Mayor

Approved as to Administration:

David. W. Tyson, City Manager

Approved as to form:

William Bragg, Interim, City Attorney

THE ABOVE ORDINANCE WAS ATTESTED BY THE CITY CLERK OF THE CITY OF EUREKA on the _____ day of _____, 2011

Pamela J. Powell, City Clerk

CHAPTER 153: FLOOD HAZARD AREA REGULATIONS

Section

- 153.01 Purpose
- 153.02 Basis for establishing area of special flood hazard
- 153.03 Definitions
- 153.04 Development permit required; application
- 153.05 Review of development permit application
- 153.06 Information to be obtained and maintained
- 153.07 Alteration of watercourses
- 153.08 Standards
- 153.09 Regulatory floodways
- 153.10 Variances
- 153.11 Enforcement
- 153.12 Abrogation and greater restrictions

§ 153.01 PURPOSE.

It is the purpose of this chapter to promote the public health, safety, and general welfare, and to minimize public and private loss due to flood conditions in specific areas. Provisions incorporated in this chapter are designed to minimize those losses through regulation of land use in areas of special flood hazard. This chapter shall apply to all lands officially designated as areas of special flood hazard.

('63 Code, § 10-5.301) (Ord. 448-C.S., passed 6-19-86)

§ 153.02 BASIS FOR ESTABLISHING AREA OF SPECIAL FLOOD HAZARD.

(A) The areas of special flood hazard are identified by the Federal Insurance Administration, through the Federal Emergency Management Agency in a scientific and engineering report entitled "The Flood Insurance Study for the City of Eureka, California," dated June 17, 1986, with accompanying Flood Insurance Rate Map and all subsequent revisions which is hereby adopted by reference and declared to be a part of this chapter. The Flood Insurance Study is on file at City Hall, 531 K Street, Eureka, California 95501.

(B) Where the Flood Insurance Study and/or FIRM has not established base flood elevation data, the Community Development Department shall obtain, review, and reasonably utilize any base flood elevation from a federal, state or other source in order to administer § 153.08, as criteria for regulations new construction, substantial improvements, or other development.

('63 Code, § 10-5.302) (Ord. 448-C.S., passed 6-19-86; Am. Ord. 460-C.S., passed 3-17-87; Am. Ord. 581-C.S., passed 11-3-94)

§ 153.03 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

APPEAL. A request for a review of the Community Development Director's interpretation of any provision of this chapter or a request for a variance.

AREA OF SHALLOW FLOODING. A designated AO, AH, or VO Zone on the FIRM. The base flood depths range from one to three feet; a clearly defined channel does not exist; the path of flooding is unpredictable and indeterminate; and velocity flow may be evident.

AREA OF SPECIAL FLOOD HAZARD. The land in the floodplain in the community subject to a 1% or greater chance of flooding in a given year. This area is designated as Zone A, AO, AH, A1-30, V, VE, VO or V1-30 on the FIRM.

BASE FLOOD. The flood having a 1% chance of being equalled or exceeded in any given year (also known as the 100-year flood).

BREAKAWAY WALL. A wall that is not part of the structure support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

DEVELOPMENT. Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or dwelling operations located within the area of special flood hazard.

FLOOD or FLOODING. A general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) The overflow of inland or tidal water; and/or,
- (2) The unusual and rapid accumulation of runoff of surface waters from any source.

FLOOD BOUNDARY FLOODWAY MAP. The official map on which the Federal Insurance Administration has delineated both the areas of flood hazards and the floodway.

FLOOD INSURANCE RATE MAP (FIRM). The official map on which the Federal Insurance Administration has delineated both areas of special flood hazards and the risk premium zones applicable to the community.

FLOOD INSURANCE STUDY. The official report provided by the Federal Insurance Administration that includes flood profiles, the FIRM, the Flood Boundary Floodway Map, and the water surface elevation of the base flood.

LOWEST FLOOR. The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of this chapter.

MANUFACTURED HOME. A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required facilities. For floodplain management purposes, the term MANUFACTURED HOME shall also include park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. For insurance purposes, the term MANUFACTURED HOME does not include park trailers, travel trailers and other similar vehicles.

MANUFACTURED HOME PARK or SUBDIVISION. A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

NEW CONSTRUCTION. Structures for which the START OF CONSTRUCTION commenced on or after the effective date of this chapter.

REGULATORY FLOODWAY. The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without

cumulatively increasing the water surface elevation more than one foot. The regulatory floodway is designated on the Flood Boundary and Floodway Map.

SAND DUNES. Naturally occurring accumulations of sand in ridges or mounds of land ward of the beach.

START OF CONSTRUCTION. For other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. L. 97-348), shall include substantial improvement, and shall mean the date the building permit was issued, provided the actual start of construction, repair, reconstruction, or replacement or other improvement was within 180 days of the permit date. The actual start shall mean either the first placement of permanent construction of a structure on a site, such as the pouring of a slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling, nor does it include the installation of streets and/or walkways, nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms, nor does it include the installation on the property of accessory buildings such as garages or sheds not occupied as dwelling units or not part of the main structure.

STRUCTURE. A walled and roofed building or manufactured home that is principally above ground.

SUBSTANTIAL IMPROVEMENT. Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure either:

- (1) Before the improvement or repair is started; or,
- (2) If the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, SUBSTANTIAL IMPROVEMENT is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either:

- (a) Any project for improvement of a structure to comply with existing state or local health, sanitary or safety code specifications which are solely necessary to assure safe living conditions; or,

- (b) Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

VARIANCE. A grant of relief from the requirements of this chapter which permits construction in a manner that would otherwise be prohibited by this chapter. ('63 Code, § 10-5.303) (Ord. 448-C.S., passed 6-19-86; Am. Ord. 460-C.S., passed 3-17-87)

§ 153.04 DEVELOPMENT PERMIT REQUIRED; APPLICATION.

(A) A development permit must be obtained from the Community Development Department prior to construction or development within any area of special flood hazard established in § 153.02 of this chapter. Plans, in duplicate scale, for an application for a development permit shall indicate the nature, location, dimensions and elevation of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing.

(B) Specifically, the following information is required:

- (1) Proposed elevation, in relation to mean sea level, of the lowest floor (including basement) of all structures;
- (2) Proposed elevation, in relation to mean sea level, to which any structure will be floodproofed;
- (3) Certification by a registered engineer or architect that the flood proofing methods for any nonresidential structure meet the floodproofing criteria in § 153.08 of this chapter;
- (4) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development; and,
- (5) Elevation certificates, on forms provided by FEMA, prepared by a registered engineer or architect for all structures in an area of special flood hazard or a floodway.

('63 Code, § 10-5.304) (Ord. 448-C.S., passed 6-19-86; Am. Ord. 460-C.S., passed 3-17-87) Penalty, see § 150.999

§ 153.05 REVIEW OF DEVELOPMENT PERMIT APPLICATION.

(A) Applications for a development permit shall be reviewed by the Community Development Department. The Community Development Department shall coordinate the review of development permits with other city departments.

(B) The development permit application shall be reviewed to determine the following:

- (1) That the permit requirements of this chapter have been satisfied and that the site is reasonably safe from flooding.
- (2) If the proposed development adversely affects the flood carrying capacity of the area of special flood hazard. For purposes of this chapter, ADVERSELY AFFECTS shall mean that the cumulative effect of the proposed development when combined with all other existing and anticipated development will increase the water surface elevation of the base flood more than one foot at any point.

('63 Code, § 10-5.305) (Ord. 448-C.S., passed 6-19-86)

§ 153.06 INFORMATION TO BE OBTAINED AND MAINTAINED.

The Community Development Department will obtain and maintain for public inspection and make available as needed for flood insurance policies, all certifications required in §§ 153.04, 153.05, 153.08, and 153.09 of this chapter.

('63 Code, § 10-5.306) (Ord. 448-C.S., passed 6-19-86; Am. Ord. 460-C.S., passed 3-17-87)

§ 153.07 ALTERATION OF WATERCOURSES.

In riverine situations, the city will notify adjacent communities and the California Department of Water Resources prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency. The flood carrying capacity of the altered or relocated portion of said watercourse shall be required to be maintained.

('63 Code, § 10-5.307) (Ord. 448-C.S., passed 6-19-86) Penalty, see § 150.999

§ 153.08 STANDARDS.

In all areas of special flood hazards the following standards shall apply:

- (A) Anchoring. All new construction and substantial improvements shall be designed or modified and adequately anchored to prevent flotation, collapse, or lateral

movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.

(B) Construction materials and methods.

(1) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage and using methods and practices that minimize flood damage.

(2) For all new construction and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater. Designs for meeting this requirement must either be certified by a registered engineer or architect or must meet or exceed the following minimum criteria. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwater.

(C) Elevation and floodproofing.

(1) New construction and substantial improvement of structures shall be elevated to at least one foot above the base flood elevation. Upon completion of the structure, the elevation of the bottom of the lowest structural member of the lowest floor, including basement shall be certified as meeting this requirement by a registered engineer or architect and provided to the Community Development Department. New nonresidential construction may meet the standards in subsection (2) of this division.

(2) New nonresidential construction shall be elevated in conformance with subsection (1) of this division (C).

(3) Additions to nonconforming, nonresidential, structures shall be elevated in conformance with subsection (1) of this division or, together with the attendant utility and sanitary facilities, meet the following requirements:

(a) Be floodproofed so that at the base flood level the structure is watertight with walls substantially impermeable to the passage of water;

(b) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and,

(c) Be certified by a registered professional engineer or architect that the professional developed and/or reviewed the structural design, specifications, and plans for construction, and that the design and methods of construction are in accordance with accepted standards of practice; and the standards of this division are satisfied. Such certification shall be provided to the Community Development Department.

(4) In no event shall basements be permitted below the base flood elevation.

(D) Standards for storage and installation of materials and equipment.

(1) The storage or processing of materials that are, in time of flooding, buoyant, flammable, explosive, or could be injurious to human, animal or plant life is prohibited.

(2) Storage of other material or equipment may be allowed if not subject to major damage by floods and firmly anchored to prevent flotation or if readily removable from the area within the time available after flood warning.

(3) Electrical, heating, ventilation, plumbing and air conditioning equipment, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

(E) Standards for utilities.

(1) All new and replacement water supply and sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from systems into floodwaters.

(2) On-site disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

(F) Standards for subdivisions.

(1) All tentative maps shall identify the flood hazard area and the base flood elevation. Proposals shall minimize the potential for flood damage in the design of the subdivision, including utilities as outlined in division (E) of this section. Adequate drainage shall be provided to reduce exposure to flood damage.

(2) Final subdivision maps shall provide base flood elevations. If the site is filled above the base flood, the final pad elevations shall be certified by a registered engineer or architect.

(3) For all proposals for development of five parcels or more, the rate of flood discharge exiting the development after construction shall be equal or less than flood discharge at the location prior to the development and shall be certified by a registered professional engineer.

(G) Standards for manufactured homes and manufactured home parks and subdivisions.

(1) All manufactured homes shall be placed on permanent foundations such that the lowest floor of the manufactured home is elevated one foot above the base flood elevation, and securely anchored to the elevated foundation system. If pilings are used for elevation, construction standards for pilings shall be met.

(2) All manufactured homes and manufactured home additions to be placed in areas of special flood hazard shall be installed using methods and practices which minimize flood damage including anchoring to resist flotation, collapse, or lateral movement resulting from hydrodynamic and hydrostatic loads, including effects of buoyancy. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.

(3) Adequate road access for a hauler and surface drainage shall be provided as determined by the Director of Public Works.

(4) Proposals for manufactured home parks or subdivisions shall meet the requirements indicated in division (F) of this section.

('63 Code, § 10-5.308) (Ord. 448-C.S., passed 6-19-86; Am. Ord. 460-C.S., passed 3-17-87; Am. Ord. 589-C.S., passed 2-21-95) Penalty, see § 150.999
§ 153.09 REGULATORY FLOODWAYS.

(A) Located within areas of special flood hazard established in § 153.02 of this chapter are areas designated as floodways.

(B) Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, the following provisions shall apply:

(1) The regulatory floodway shall be that floodway designated in the FIS, dated July 19, 1985.

(2) Encroachments, including fill, new construction, substantial improvements, and other development are prohibited within the regulatory floodway unless certification by a registered engineer is provided demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

('63 Code, § 10-5.309) (Ord. 448-C.S., passed 6-19-86)

§ 153.10 VARIANCES.

(A) Variances from the requirements may be issued as provided for in Section 60.6 of the National Flood Insurance Program (NFIP) Regulations and in Title 14 of the California Administrative Code for coastal zone areas. Requests for variances shall be made to the Director of Community Development who shall have the authority to review and approve, approve with conditions, or deny the request. The Director's decision may be appealed to the City Planning Commission in accordance with this section.

(B) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to grant relief. Any applicant receiving a variance shall be given written notice that the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage and such construction below the base flood level increases risks to life and property.

('63 Code, § 10-5.310) (Ord. 448-C.S., passed 6-19-86)

§ 153.11 ENFORCEMENT.

Enforcement of this chapter shall follow the procedures outlined in § 155.378 of this title.

('63 Code, § 10-5.311) (Ord. 448-C.S., passed 6-19-86)

§ 153.12 ABROGATION AND GREATER RESTRICTIONS.

This chapter is not intended to repeal, abrogate, or impair existing easements, covenants, or deed restrictions. However, were this chapter and another chapter, easement, covenant or deed restriction to conflict or overlap, whichever imposes the more stringent restrictions shall prevail, specifically including § 150.018(D) and Chapter 156 of this title.

('63 Code, § 10-5.312) (Ord. 448-C.S., passed 6-19-86)